IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ARB-304-2025 (O&M)
Date of Decision:19.02.2026

M/S K.D. Solar Systems

.....Petitioner

Versus

M/S Acme Cleantech Solutions Pvt. Ltd.

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Punit Dutt Tyagi, Advocate (Through V.C.) and
Ms. Smriti Sahay, Advocate for the petitioner.

Mr. Dhanesh Relan, Advocate and
Ms. Sonika Singh, Advocate for the respondent.

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JASGURPREET SINGH PURI J.(Oral)

1. The present is a petition filed under Section 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeking appointment of a sole arbitrator in the present case.

2. Learned counsel for the petitioner submitted that there was an agreement between the petitioner and the respondent in the form of two purchase orders, which have been attached along with the present petition vide Annexure P-2. The aforesaid purchase orders are dated 13.06.2017 and 07.09.2017 respectively and in pursuance of these purchase orders, four work orders were issued that are ancillary to the aforesaid purchase orders.

He further submitted that both the purchase orders contain arbitration clauses, i.e., Clause Nos. 10 and 23, which provide that in the event of any dispute or difference arising out of or in connection with the purchase orders, including any question regarding interpretation or any other matter, the parties shall resolve such dispute or difference by reference to arbitration, to be conducted in accordance with the Arbitration and Conciliation Act, 1996, by a sole arbitrator appointed by the purchaser in accordance with law.

3. He further submitted that since a dispute arose between the parties, the petitioner served a notice upon the respondent vide Annexure P-11 dated 15.10.2023 invoking the arbitration clauses. The respondent vide reply dated 06.11.2023 (Annexure P-12) denied the claim of the petitioner. Therefore, he submitted that this Hon'ble Court may appoint a sole arbitrator for adjudicating the dispute.

4. On the other hand, learned counsel for the respondent submitted that the present petition is liable to be dismissed on the ground that there were in fact a total of six purchase orders and eight work orders between the parties. With regard to four purchase orders and the remaining work orders, as per the clause, the Court of jurisdiction and seat of arbitration was at Delhi. Therefore, the petitioner with regard to the said purchase orders and work orders has already invoked the jurisdiction of Hon'ble Delhi High Court under Section 11 of the Act, in which an arbitrator was appointed. After constitution of the said Arbitral Tribunal

consisting of the sole arbitrator, the arbitration proceedings are in progress. He submitted that before the aforesaid learned arbitrator, the petitioner has made a statement of claim not only with regard to those purchase orders and work orders which were the subject of dispute to be adjudicated by the arbitrator in Delhi, but also with regard to those purchase orders and work orders which are the subject matter of the present petition. In this way, a consolidated claim was made by the petitioner before learned arbitrator, who is proceeding with the arbitration proceedings at Delhi. Therefore, the present petition is not maintainable for appointment of an arbitrator for those disputes which are already sub-judice and pending consideration before learned arbitrator at Delhi. He further submitted that when the notice under Section 21 of the Act was issued vide Annexure P-11 dated 15.10.2023, total amount claimed was mentioned therein without specifying the purchase orders or work orders regarding which the petitioner intended to invoke arbitration. Although the petitioner proposed names of arbitrators in the notice but the respondent did not accept them. Therefore, the present petition is liable to be dismissed.

5. I have heard the learned counsels for the parties.

6. According to learned counsel for the petitioner there are two purchase orders dated 13.06.2017 and 07.09.2017. Ancillary to these two purchase orders, there are four work orders. Both the purchase orders contain arbitration clauses at Clause Nos. 10 and 23, respectively. The same are reproduced as under:-

"*Clause 10. In the event of any dispute or difference out of or in connection with this Purchase Order as to the interpretation or any other matter then in such event the parties shall resolve such dispute or difference by reference to Arbitration to be conducted in accordance with the Arbitration and Conciliation Act, 196 by sole Arbitrator appointed in accordance with said rules. The arbitration will be held in Gurgaon and conducted in the English language."*

"Clause 23- The parties shall first use their best efforts to settle amicably any dispute arising out of or in connection with this PO as to the interpretation or any other matter, by negotiation by referring the dispute to the senior representatives of each Party, requesting a resolution of the dispute within Ten (10) days of reference.

In the event of any dispute or difference out of or in connection with this PO as to the interpretation or any other matter, where such matter cannot be resolved amicably, then in such event the parties shall resolve such dispute or difference by reference to Arbitration to be conducted in accordance with the Arbitration and Conciliation Act, 196 by sole Arbitrator appointed by the Purchaser in accordance with said rules. The arbitration will be held at Gurugram, Haryana and shall be conducted in the English language."

7. A perusal of the aforesaid notice Annexure P-11 which was sent under Section 21 of the Act would show that the arbitration clauses have been invoked and the names of the proposed arbitrators were also suggested. However, the description of the purchase orders was not provided and only the total sum claimed by the petitioner was mentioned. In the notice, the arbitration clause has been reproduced and numbered as Clause 8 whereas in the present two purchase orders, the relevant clauses appear to be at different paragraph numbers. Nonetheless, the notice under Section 21 of the Act has been issued in this regard.

8. The law with regard to the scope and nature of jurisdiction to be exercised by this Court under Section 11 of the Arbitration and Conciliation Act, 1996 is no longer *res integra.* The same has been authoritatively settled by the Hon'ble Supreme Court in ***"SBI General Insurance Company Limited Vs. Krish Spinning", 2024 SCC Online SC 1754*** and also another judgment of Hon'ble Supreme Court in ***"Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re" (2024) 6 SCC 1*** and therefore, the issue stands conclusively settled. The relevant portion of the aforesaid judgment of Hon'ble Supreme Court passed in ***SBI General Insurance Company Limited's case (Supra)*** is reproduced as under:-

> *"110. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the*

arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

111. The use of the term 'examination' under Section 11(6-A) as distinguished from the use of the term 'rule' under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral tribunal to 'rule' under Section 16. The prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.

112. The aforesaid approach serves a two-fold purpose– firstly, it allows the referral court to weed out nonexistent arbitration agreements, and secondly, it protects the jurisdictional competence of the arbitral tribunal to rule on the issue of existence of the arbitration agreement in depth.

113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re: Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration

agreement and not any other issues. The relevant observations are extracted hereinbelow:

> *"209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall "examine the existence of a prima facie arbitration agreement and not other issues". These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators.[…]*
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> *(Emphasis supplied)*

114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of

prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).

115. The dispute pertaining to the "accord and satisfaction" of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by "accord and satisfaction."

116. The question of "accord and satisfaction", being a mixed question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be looked into by the referral court, even for a prima facie

determination, before the arbitral tribunal first has had the opportunity of looking into it."

9. The relevant paragraphs of the aforesaid judgment passed in ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re Case (Supra)*** are also reproduced as under:-

"120. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence of an arbitration agreement. Second, parties to an arbitration agreement mutually intend to confer jurisdiction on the arbitral tribunal to determine questions as to jurisdiction as well as substantive contractual disputes between them. The separability presumption gives effect to this by ensuring the validity of an arbitration agreement contained in an underlying contract, notwithstanding the invalidity, illegality, or termination of such contract. Third, when the parties append their signatures to a contract containing an arbitration agreement, they are regarded in effect as independently appending their signatures to the arbitration agreement. The reason is that the parties intend to treat an

arbitration agreement contained in an underlying contract as distinct from the other terms of the contract; and Fourth, the validity of an arbitration agreement, in the face of the invalidity of the underlying contract, allows the Arbitral Tribunal to assume jurisdiction and decide on its own jurisdiction by determining the existence and validity of the arbitration agreement. In the process, the separability presumption gives effect to the doctrine of competence-competence.

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165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from section 7 of the Arbitration Act. In Duro Felguera (supra), this Court held that the referral courts only need to consider one aspect to determine the existence of an arbitration agreement - whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore,

the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by arbitral tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia (supra) in the context of Section 8 and section 11of the Arbitration Act.

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the referral court. The referral court is not the appropriate forum to conduct a minitrial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the arbitral tribunal. This

position of law can also be gauged from the plain language of the statute."

10. Issuance of the purchase orders (Annexure P-2) dated 13.06.2017 and 07.09.2017 has not been disputed by learned counsel for the respondent. It has further not been disputed by learned counsel for the respondent that these two purchase orders contain arbitration clauses. It was argued by learned counsel for the respondent that the present petition under Section 11 of the Act would not be maintainable because the petitioner has already raised the same claim in its statement of claim before the learned arbitrator at Delhi, pertaining to those purchase orders whose jurisdiction was at Delhi, as well as the present purchase orders. However jurisdiction qua present purchase orders is at Gurugram within jurisdiction of this Court.

11. During the course of arguments, learned counsel for the petitioner submitted that the aforesaid claim, pertaining to the subject matter of the present petition, which was part of the statement of claim before learned arbitrator at Delhi was made inadvertently and now an application has been filed before learned arbitrator at Delhi for the withdrawal of the same but no order has yet been pronounced on the said application. However, jurisdiction qua present purchase order is at Gurugram

12. As to whether there is a semblance or consolidation of the claims by the petitioner before the learned Arbitrator at Delhi or whether

the petitioner is entitled to the grant of any claim raised in the present petition, or whether such claims are maintainable before learned arbitrator, lies within the domain and scope of learned arbitrator at the relevant stage. As aforesaid, the scope of reference of the Court under Section 11 of the Act is confined only to *prima facie* existence of an arbitration clause, which is present in the case at hand. It is also a settled law that exactitude in notices under Section 21 of the Act is not necessary; what is required is the invocation of the arbitration clause. The Hon'ble Supreme Court in ***Adavya Projects Pvt. Ltd. v. M/s Vishal Structurals Pvt. Ltd. & Ors. (2025) SCC Online SC 806*** has observed and laid down the principles as follows:-

> *" Summary of Conclusions*
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> *60. Our legal analysis of the issues that we set out above, as well as our findings in the facts of the given appeal, can be stated as follows:*
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> *60.1. A notice invoking arbitration under Section 21 ACA is mandatory as it fixes the date of commencement of arbitration, which is essential for determining limitation periods and the applicable law, and it is a prerequisite to filing an application under Section 11. However, merely because such a notice was not issued to certain persons who are parties to the arbitration agreement does not denude the arbitral tribunal of its jurisdiction to implead them as parties during the arbitral proceedings.*
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> *60.2. The purpose of an application under Section 11*

is for the court to appoint an arbitrator, so as to enable dispute resolution through arbitration when the appointment procedure in the agreement fails. The court only undertakes a limited and prima facie examination into the existence of the arbitration agreement and its parties at this stage. Hence, merely because a court does not refer a certain party to arbitration in its order does not denude the jurisdiction of the arbitral tribunal from impleading them during the arbitral proceedings as the referral court's view does not finally determine this issue.

60.3. The relevant consideration to determine whether a person can be made a party before the arbitral tribunal is if such a person is a party to the arbitration agreement. The arbitral tribunal must determine this jurisdictional issue in an application under Section 16 by examining whether a non-signatory is a party to the arbitration agreement as per Section 7 ACA.

60.4. In the facts of the present appeal, respondents 2 and 3 are parties to the arbitration agreement in Clause 40 of the LLP Agreement despite being non-signatories. Their conduct is in accordance with and in pursuance of the terms of the LLP Agreement, and hence, they can be made parties to the arbitral proceedings."

13. It has been held in ***SBI General Insurance Company***

Limited's case (supra) and in ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re (supra)*** that at the time of reference, the Court under Section 11 of the Act is not to conduct a mini-trial and is only required to examine the *prima facie* existence of an arbitration clause and its invocation thereof-nothing more and nothing less. In this way, this Court would not conduct any mini-trial as to whether the claim would be arbitrable before the learned arbitrator or not.

14. Another issue that arises in the present case is that there are two purchase orders and as per learned counsel for the petitioner, there are four ancillary work orders connected with the purchase orders. Therefore, one consolidated arbitration proceeding cannot be ordered. Reference can be made to the judgment of the Hon'ble Supreme Court in ***M/s. Duro Felguera S.A. vs. M/s. Gangavaram Port Limited, (2017) 9 SCC 729*** wherein it was held that in case where various agreements constitute a composite transaction, Court can refer disputes to arbitration if all ancillary agreements are relatable to principal agreement and performance of one agreement is so intrinsically interlinked with other agreements. Consequently, in the aforesaid case, six Arbitral Tribunals were constituted with same arbitrators.

15. In view of the aforesaid facts and circumstances, the present petition is allowed. Two different arbitral tribunals are hereby constituted, each consisting of a common sole arbitrator, with regard to the purchase

orders (Annexure P-2) dated 13.06.2017 and 07.09.2017 along with their ancillary work orders. There shall be common arbitrator for both arbitral tribunals. Mr. Shri Krishan Kaushik, District & Sessions Judge (Retd.), resident of House No.1118, Sector 46, Gurugram, Haryana, Mobile No. 9599499060, Email: kaushik1010@gmail.com is nominated as the Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions including Section 12 of the Act.

16 Parties are directed to appear before learned Arbitrator on date, time and place to be fixed and communicated by learned Arbitrator at his convenience.

17. Fee shall be paid to learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.

18. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.

19. A request letter alongwith a copy of the order be sent to Mr. Shri Krishan Kaushik, District & Sessions Judge (Retd.).

19.02.2026 **(JASGURPREET SINGH PURI)**
shweta **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No