



ARB-328-2025 (O&M)

-1-

269

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**ARB-328-2025 (O&M)
Date of Decision: 16.02.2026**

M/s Okhae Electronics India Private Limited

.... Applicant

Versus

M/s Geumo Constructions Private Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rakesh Dhiman, Advocate,
for the applicant.

Mr. Kartik Gupta, Advocate,
Mr. Navin Kumar, Advocate,
Ms. Surbhi Aggarwal, Advocate (through V.C.) &
Mr. Hitesh Grewal, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') praying for appointment of an independent Arbitrator to adjudicate upon the disputes which have arisen between the parties.

2. Learned counsel for the applicant submitted that there was a work order issued by the applicant to respondent No.1 vide Annexure P-1 dated 02.09.2024 which contains detailed terms and conditions and is therefore, in the nature of a Contract. He further submitted that the aforesaid work order (Annexure P-1) provides a mechanism for resolution of disputes between the parties, including a valid arbitration clause and the applicability of the Arbitration and Conciliation Act, 1996. He further submitted that since a dispute arose between the parties, the applicant invoked the aforesaid



arbitration clause by issuing notice under Section 21 of the Act to the respondent vide Annexure P-2 dated 22.04.2025 wherein even the name of an Arbitrator was proposed by the applicant. The respondents had replied to the said notice vide Annexure P-3 wherein they did not agree to the appointment of the Arbitrator and therefore, the mechanism had failed. Consequently, the present application has been filed under Section 11 of the Act for appointment of a Sole Arbitrator by this Court.

3. On the other hand, Ms. Surbhi Aggarwal, learned counsel for the respondents has caused appearance through video conferencing and Mr. Kartik Gupta, Mr. Navin Kumar and Mr. Hitesh Grewal, Advocates, who are present in Court, have submitted that there is no dispute with regard to existence of the Contract in the nature of a work order vide Annexure P-1 dated 02.09.2024, regarding which, the work was executed and there is also no dispute with regard to existence of a valid arbitration clause i.e. Clause 21. She further submitted that there is also no dispute that the applicant has invoked the aforesaid arbitration clause by issuing notice under Section 21 of the Act vide Annexure P-2 to which the reply was given by the respondents to the applicant wherein they did not agree to the appointment of the proposed Arbitrator.

4. Learned counsel for the respondents has however submitted that the respondents have got two objections with regard to the present application filed by the applicant. Firstly that the present application is liable to be dismissed on the ground of misjoinder of the parties. In this regard, she referred to the memo of parties whereby there are three respondents and submitted that the Contract in the nature of work order was between the applicant and respondent No.1 only whereas respondents No.2 & 3 are non-



signatories and they were not parties to the Contract, therefore, they have been wrongly joined as party. She further submitted that secondly, by virtue of the aforesaid Arbitration Clause i.e. Clause 21 of the Contract/Work Order, before resorting to the arbitration, the matter was first required to be discussed in order to reach at an amicable settlement. However, no steps were taken by the applicant in this regard and it straight-away issued a notice under Section 21 of the Act invoking the aforesaid arbitration clause. Therefore, on this ground as well, the present application is liable to be dismissed.

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

6. Neither the Work Order/Contract is in dispute nor is there a dispute with regard to *prima facie* existence of an arbitration clause in the aforesaid Contract/Work Order (Annexure P-1) which has been invoked by the applicant by issuing notice under Section 21 of the Act to the respondents vide Annexure P-2. However, two-fold objections were raised by learned counsel for the respondents. Therefore, each of the objections is required to be dealt with independently.

7. So far as the first objection raised by learned counsel for the respondents is concerned, the same pertains to the misjoinder of parties. As per the learned counsel for the respondents, respondent No.1 was the party to the Contract/Work Order whereas respondent No.3 is merely a Director of the Company, who has been arrayed by his name and she has therefore objected that the present application is liable to be dismissed on the aforesaid ground. However, the law in this regard is well settled. Hon'ble Supreme Court in "*Adavya Projects (P) Limited Vs. Vishal Structurols (P) Limited*" (2025) 9 SCC 686 observed that such objections would not entitle



non-suiting of the applicant on this ground. The relevant portion of the aforesaid judgment is reproduced as under:-

40. Summary of Conclusions: 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:

I. A notice invoking arbitration under Section 21 of the 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.

II. 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.

III. 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



nonsignatory is a party to the arbitration agreement as per Section 7 of the ACA.

IV. In the facts of the present appeal, respondent nos. 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.”

8. Therefore, this Court is of the considered view that the aforesaid objection taken by the learned counsel for the respondents is not in accordance with law and therefore, not sustainable.

9. So far as the second objection raised by the learned counsel for the respondents with regard to non-resorting to the pre-arbitral process by way of an amicable settlement is concerned, the same is also no longer *res integra*. In this regard, a reference can be made to the judgments passed by 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 in “*SBI General Insurance Company Limited Vs. Krish Spinning*”, 2024 SCC Online SC 1754 wherein it was so held that the scope of examination under Section 11(6-A) of the Act is confined to the existence of an arbitration agreement on the basis of Section 7 of the Act. The use of the term ‘examination’ under Section 11(6-A) as distinguished from the use of term ‘rule’ under Section 16 of the Act 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 and 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.

10. Seven Judges Constitution Bench of Hon'ble Supreme Court in ***Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, in Re: case (Supra)*** had observed that at the stage of reference under Section 11 of the Act, the Court has only to see *prima facie* existence of an arbitration clause and its invocation thereof. The relevant portion of the said judgment is 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.

xx

xx

xx

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 11 of 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.”

11. The relevant portion of the judgment passed by Hon’ble Supreme Court in “**SBI General Insurance Company Limited Vs. Krish Spinning**”, **2024 SCC Online SC 1754** is also 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 non-existent 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.[...]”

(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.”

12. Thereafter, Hon’ble Delhi High Court in “**Jhajharia Nirman Ltd. versus South Western Railways**” **2024 SCC Online Del 7133**, while dealing with the issue of pre-arbitral mechanism observed that any pre-condition in an arbitration agreement obliging one of the contracting parties to either exhaust the pre-arbitral amicable resolution avenues or to take recourse to Conciliation are directory and not mandatory.



ARB-328-2025 (O&M)

-11-

13. Therefore, this Court is of the considered view that all the essential conditions for appointment of a Sole Arbitrator under Section 11 of the Act remain satisfied. Consequently, the present application is allowed. Mrs. Keshni Anand Arora, Chief Secretary, IAS (Retd.), resident of House No. 410P, Sector-6, MDC, Panchkula, Mobile No.9988177777, Email ID: keshniarora@yahoo.co.in, 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.

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

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

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

17. A request letter alongwith a copy of the order be sent to Mrs. Keshni Anand Arora, Chief Secretary, IAS (Retd.).

16.02.2026

Bhumika

**(JASGURPREET SINGH PURI)
JUDGE**

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |