 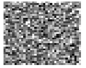

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

***

ARB-26-2026

Date of Decision: 18.03.2026

M/s Priya Construction .... Applicant

Versus

The Commissioner, Municipal Corporation, Faridabad & Ors. ..Respondents

ARB-32-2026

M/s Priya Construction .... Applicant

Versus

The Commissioner, Municipal Corporation, Faridabad & Ors. ..Respondents

ARB-36-2026

M/s Priya Construction .... Applicant

Versus

The Commissioner, Municipal Corporation, Faridabad & Ors. ..Respondents

ARB-38-2026

M/s Priya Construction .... Applicant

Versus

The Commissioner, Municipal Corporation, Faridabad & Ors. ..Respondents

ARB-43-2026

M/s Priya Construction .... Applicant

Versus

The Commissioner, Municipal Corporation, Faridabad & Ors. ..Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.S. Rana, Advocate
for the applicant (in all the cases).

Mr. Sharad Aggarwal, Advocate,
for the respondents (in all cases).

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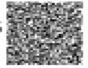
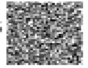


<u>JASGURPREET SINGH PURI, J.</u> (ORAL)

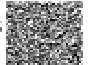
1. All these five applications have been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') and are taken up together for final disposal with the consent of learned counsels for the parties since they are identical in nature and the parties are also the same. The prayer in these applications is for appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties.

2. Learned counsel appearing on behalf of the applicant in all the five cases has submitted that Notice inviting tender in the nature of an Agreement floated by the respondents for hiring of service providers for complete sanitation work for manual night sweeping at different place within the Municipal Corporation, Faridabad and the same has been annexed as Annexure P-1. In all the five cases, the offer of the applicant was accepted in furtherance of the aforesaid tender (Agreement) and vide Annexure P-3, notice to proceed with the work was issued in each case and it was also mentioned therein that the applicant is to proceed with execution of the works in accordance with the contract document. The said Agreement, which is similar in all five cases, contains a valid arbitration clause i.e. Clause 25 which provides that for agreement upto ₹10 crores, the matter shall be referred to a Single Arbitrator to be appointed by the Engineer-in-Chief from the panel of Arbitrators approved by the Government. He further submitted that in all the five cases, the claim value is less than ₹5 crores and therefore, a Single Arbitrator is required to be appointed. He submitted that as per the aforesaid arbitration clause, a Single Arbitrator is to be appointed by the Engineer-in-Chief from the panel of Arbitrator approved by the



Government which is impermissible under the law in view of the amendment of the Act which was carried out in the year 2015 whereby Section 12(5) of the Act was added and also in view of the law laid down by Hon'ble Supreme Court in "***Central Organization for Railway Electrification Vs. M/s ECI SPIC SMO MCML (JV) a Joint Venture Company***", ***2025(4) SCC 641*** and "***Perkins Eastman Architects DPC Vs. HSCC (India) Ltd.***", ***2020(20) SCC 760***, to the effect that unilateral appointment cannot be made even from a panel of Arbitrators approved by the Government. He further submitted that when a dispute arose between the parties, the applicant invoked the aforesaid arbitration clause by issuing separate notices under Section 21 of the Act to the respondents vide Annexure P-10 dated 15.11.2025 in all the cases. However, no response was received from the respondents in this regard. He therefore, prayed that an independent Sole Arbitrator may be appointed for all the cases because the Agreement is similar and for all the five claims separate Arbitral Tribunal may be constituted consisting of the same Single Arbitrator.

3. On the other hand, Mr. Sharad Aggarwal, learned counsel appearing on behalf of the respondents in all the five cases has filed respective replies, which are taken on record. He submitted that there is no dispute with regard to existence of the aforesaid agreement (Annexure P-1) between the parties and the arbitration clause contained therein, which provides that for claims less than ₹10 crores, the matter shall be referred to a Single Arbitrator to be appointed by the Engineer-in-Chief. He also submitted that there is also no dispute that the aforesaid arbitration clause has been invoked by the applicant by issuing separate notices to the respondents vide Annexure P-10 in all the cases. However, he raised an



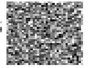
objection that after the aforesaid agreement was executed between the parties, the applicant itself defaulted and never commenced the work. Consequently, no subsisting dispute arose and for the purpose of invocation under Section 11 of the Act, there has to be some dispute and in the absence of the same, no Arbitrator can be appointed and all the applications are liable to be dismissed on this score only.

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

5. The Agreement (Annexure P-1) executed between the parties has not been disputed by learned counsel for the respondents. The invocation of the aforesaid arbitration Clause i.e. Clause 25 of the Agreement (Annexure P-1) by issuance of respective notices under Section 21 of the Act vide Annexure P-10 in all the cases has also not been disputed. The only objection which was raised by learned counsel for the respondents was with regard to the fact that there is no dispute in existence because the applicant did not perform the work and had committed default.

6. The aforesaid objection raised by learned counsel for the respondents is totally unsustainable in view of the settled law.

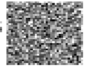
7. It is a settled law that at the stage of reference under Section 11 of the Act, the reference Court would not see as to whether there exists any dispute or not but it is only to see *prima facie* existence of an arbitration clause in the agreement and its invocation under Section 21 of the Act and these two essential conditions have not been disputed by learned counsel for the respondents. Rather in the present cases, the existence of the arbitration clause and invocation thereof is admitted by learned counsel for the respondents. Whether the present dispute is existing or not or whether its arbitrable or non-arbitrable does not fall within the scope of this court at the



reference stage. A reference can be made in this regard 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.

8. A Seven-Judge 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:-

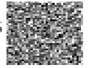
> *"**120**. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the*

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

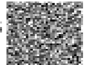
***165**. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained 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."*

9. The relevant portion of the judgment passed by Hon'ble Supreme Court in ***SBI General Insurance Company Limited's case (Supra)*** is also reproduced as under:-



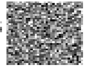
*"**110**. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should 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*

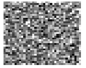
 

> *pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the referral court 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."

10. In view of the above, the aforesaid objection raised by learned counsel for the respondents is totally unsustainable. In these cases, both the essential conditions i.e. *prima facie* existence of the arbitration clause in the agreement (Annexure P-1) and its invocation remain satisfied. Since the parties in all the cases are same and the subject matter is pertaining to hiring of service providers with regard to sanitation work at different places within the Municipal Corporation, Faridabad, it will be just and proper to appoint a Single Arbitrator by constituting five separate Arbitral Tribunals for each work order in accordance with the judgment of Hon'ble Supreme Court in "***M/s Duro Felguera S.A. Vs. M/s Gangavaram Port Limited***" ***(2017) 9 SCC 729***. The list of work orders is as follows:

Sr.No.	Work Order No.	Dated
1.	HEWP/AC-89002	04.02.2025
2.	HEWP/AC-89005	04.02.2025
3.	HEWP/AC-89004	04.02.2025
4.	HEWP/AC-89001	04.02.2025
5.	HEWP/AC-89005	04.02.2025

11. However, it is made clear that the learned Sole Arbitrator appointed shall remain the same in all the five arbitral proceedings.

12. Consequently, all the five applications are allowed. Mr. Vinod Jain, District & Sessions Judge (Retd.), resident of House No.381, Sector-1, IMT, Manaser Gurgaon, Haryana, Mobile No.9468178585, Email ID.

1950vj@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.

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

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

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

16. A request letter alongwith a copy of the order be sent to Mr. Vinod Jain, District & Sessions Judge (Retd.).

18.03.2026 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

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