
(2025) 10 P&H CK 1383

In the Punjab And Haryana At Chandigarh

Case No : Arbitration Case No. 235, 254, Of 2020 (O&M), 134, 328, 601 Of 2021 (O&M)

M/S ABW Suncity

APPELLANT

Vs

Salil Sahu And Another

RESPONDENT

Date of Decision : 31-10-2025

Acts Referred:

 Arbitration And Conciliation Act, 1996 — Section 8, 11, 11(6), 11(6A), 16, 29A, 34(2)(a)(i), 34(2)(a)(ii), 34(2)(a)(iv), 34(2)(b)

Citation : (2025) 10 P&H CK 1383

Hon'ble Judges : Sheel Nagu, CJ

Bench : Single Bench

Advocate : Himanshu Gupta, Gurinder Singh Dhillon, Arun Singla, Kuldeep Kumar Kohli

Final Decision : Allowed

Judgement

Sheel Nagu, CJ

1. This order shall dispose of aforesaid five applications filed by the applicants u/s 11 (6) of Arbitration and Conciliation Act, 1996 (for short '1996 Act') seeking appointment of Arbitrator/Arbitrators.

2. Reply filed on behalf of respondents in ARB-134-2021, ARB-235-2020, ARB-254-2020 is taken on record and perused. No reply has been filed in ARB-601-2021 and the respondent in ARB-328-2021 has conceded to the averments in the petition and chosen to file no reply.

3. The rival parties herein entered into agreements dated 13.10.2009 (ARB-134-2021), 17.05.2012 (2010 (ARB-328-2021) & 07.10.2011 (ARB-601-2021) containing an arbitration clause as follows:

"All or any disputes arising out or touching upon or in relation to the terms of the application and/or Apartment Buyer's Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the

parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceeding shall be governed by the Arbitration & Conciliation Act 1996 or any statutory amendments / modifications thereof for the time being in force. The arbitration proceeding shall be held at any appropriate location in Gurgaon, Haryana, by a sole arbitrator who shall be the partner of the First Party or its nominee. The allottees hereby confirms that he shall have no objection to this appointment. The court at Gurgaon alone and the Punjab & Haryana High Court at Chandigarh alone shall have the jurisdiction in all matters arising out of / touching and / or concerning the application and / or Apartment Buyer's Agreement."

3.1 Dispute erupted between the parties. The applicant served notice upon respondents seeking resolution of dispute through Arbitral Tribunal, but to no avail.

4. The counsel for respondents in ARB-134-2021, ARB-235-2020 and ARB-254-2020 have disputed the existence of a valid Arbitration Clause, period of Limitation and the dispute being covered by the Arbitration Agreement. However, they have not disputed the service of notice.

5. The law on the scope of examination u/s 11 (6) of 1996 Act is well settled. The Apex Court in *Vidya Drolia Vs. Durga Trading Corporation*, (2021) 2 SCC 1 (para 154.2, 154.3 and 154.4) held that the Court may undertake a prima facie examination at this stage and reject an application where it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitral. In this context, the relevant extract of the said judgment is as follows :-

"154.2 Scope of judicial review and jurisdiction of the Court under Sections 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.

154.3 The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34 (2) (a) or sub clause (i) of Section 34 (2) (b) of the Arbitration Act.

154.4 Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "non arbitrable" and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are

contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.”

Further in the case of Vidya Darolia’s case (supra) it was held as under:

“244. Before we part, the conclusions reached, with respect to Question 1, are :

244.1 Sections 8 and 11 of the Act have the same ambit with respect to judicial interference.

244.2 Usually, subject matter arbitrability cannot be decided at the stage of Section 8 or 11 of the Act, unless it is a clear case of deadwood.

244.3 The court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.

244.4 The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. “when in doubt, do refer”.

244.5 The scope of the court to examine the prima facie validity of an arbitration agreement includes only:

244.5.1 Whether the arbitration agreement was in writing? Or

244.5.2 -----

244.5.3 Whether the core contractual ingredients qua the arbitration agreement were fulfilled?

244.5.4 On rare occasions, whether the subject matter of dispute is arbitrable?”

6. In NTPC Ltd. Vs. SPML Infra Ltd. (2003) 2 SCC 453, the Apex Court while relying on the principle laid down in Vidya Drolia (supra) judgment, has reiterated:

“26. As general rule and a principle, the arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. As an exception to the rule, and rarely as a demurrer, the referral court may reject claims which are manifestly and ex-facie non-arbitrable.”

7. Similarly, in DLF Home Developers Ltd. Vs. Rajapura Homes (P) Ltd., (2021) 2 SCC 675, the Apex Court reiterated that :

“19. To say it differently, this Court or a High Court, as the case may be, are not expected to act mechanically merely to deliver a purported dispute raised by an

applicant at the doors

of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section 11 (6-A) of the Act. Such a review, as already clarified by this Court, is not intended to usurp the jurisdiction of the Arbitral Tribunal but is aimed at streamlining the process of arbitration. Therefore, even when an arbitration agreement exists, it would not prevent the court to decline a prayer for reference if the dispute in question does not correlate to the said agreement.”

8. In light ratio laid down in Vidya Drolia (supra), NTPC Ltd. (supra) and DLF Homes (supra), pre-requisites for invoking power u/s 11 (6) of 1996 Act appear to be satisfied and the case does not appear to be deadwood.

9. Accordingly, all the applications are allowed.

9.1 Mr. D.K. Singal, Advocate, residing at Kothi No.114, Sector 9, Panchkula, Mobile No. 9417206670, is hereby appointed as Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements under 1996 Act before proceeding ahead.

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

11. The Arbitrator is at liberty to determine her/his own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement and the scope of Arbitrator’s authority in accordance with Section 16 of the 1996 Act.

12. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of 1996 Act, as amended from time to time, or fee as agreed to by the parties.

13. The Arbitrator is requested to complete the arbitral proceedings as per time limit stipulated u/s 29-A of 1996 Act.

14. Any observation made hereinabove is meant merely for passing this order and shall not be construed as expression on merits of the dispute.

15. A request letter along with copy of this order be sent to Mr. D.K. Singal, Advocate.