IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ARB-788-2025 (O&M)
Date of Decision:09.03.2026

Vision Plus Financial Services (Vision Datsun)

.....Petitioner

Versus

Nissan Motor India Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Ms. Veena Hooda, Advocate for the petitioner.

Mr. Munish Kumar Garg, Advocate,
Mr. Tanuj Goyal, Advocate and
Mr. Govind Rishi, Advocate for the respondent.

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JASGURPREET SINGH PURI J.(Oral)

1. The present is a petition filed under Section 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 exists a dealership agreement between the parties vide Annexure A-2, wherein there is an arbitration clause at Para No.22.12 which provides that all questions, differences, controversies or disputes whatsoever between the parties touching upon responsibilities and obligations of the parties or any matter connected with the terms of this agreement, whether as to constructions or

otherwise, shall be referred to arbitration of a sole arbitrator as may be mutually agreed to be appointed as per the provisions of the Indian Arbitration and Conciliation Act, 1996. She further submitted that since a dispute arose between the parties, the petitioner served a notice dated 28.08.2025 upon the respondent vide Annexure A-7 for invoking the arbitration clause but no response was received from the respondent. Therefore, she submitted that this Hon'ble Court may appoint a sole arbitrator to adjudicate upon the dispute.

3. On the other hand, learned counsel for the respondent submitted that there is no dispute regarding the existence of the agreement (Annexure A-2) or the arbitration clause contained therein and there is also no dispute regarding the invocation of the arbitration clause by the petitioner by issuing notice (Annexure A-7) upon the respondent, to which the respondent did not reply. He further submitted that the objection of the respondent is that the claim of the petitioner is time barred and therefore, constitutes a non-arbitrable dispute and cannot be referred to arbitration. Accordingly, the present petition may be dismissed.

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

5. The existence of the agreement containing the arbitration clause, as well as the invocation of the said clause by issuance of notice, has not been disputed by the learned counsel for the respondent. The only objection raised by the respondent is that the claim of the petitioner is time barred.

6. The aforesaid objection raised by learned counsel for the respondent is not sustainable in view of the law laid down 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 law is no longer *res integra*. 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.*
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> *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. […]

(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."

7. 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."

8. It is a settled law that the aforesaid objection regarding the time-barred nature of the claim cannot be raised at the reference stage under Section 11 of the Act, and the same can always be taken at an appropriate stage before the learned Arbitrator, if so required. The essential requirements for the appointment of an arbitrator are therefore, satisfied in the present case, as they are not in dispute.

9. In view of the aforesaid facts and circumstances, the present petition is allowed. Hon'ble Mr. Justice Pramjeet Singh Dhaliwal (Retd.),

resident of House No.2254, Sector 35-C, Chandigarh, Mobile Nos. 7837049204 and 9814115825, Email:dhaliwalps@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.

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

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

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

13. A request letter alongwith a copy of the order be sent to Hon'ble Mr. Justice Pramjeet Singh Dhaliwal (Retd.).

09.03.2026 **(JASGURPREET SINGH PURI)**
shweta **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No