



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

261

**ARB-46-2023
Reserved on 25.03.2025
Pronounced on 28.03.2025**

HARCHARAN SINGH**....APPLICANT****Vs.****ASHEESH VAID AND ANR.****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

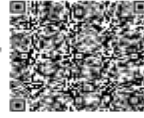
Present: Mr. Vinod Gupta, Advocate
for the applicant.

Mr. Nitin Jain, Advocate
for the respondents.

JAGMOHAN BANSAL, J (ORAL)

1. The applicant through instant application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") is seeking appointment of an Arbitrator to adjudicate the dispute between the parties.

2. Mr. Vinod Gupta, Advocate submits that applicant and respondents executed MOU dated 08.08.2013 and as per said MOU, the applicant was to be inducted as partner in the agency allotted by Indian Oil Corporation Limited (for short, 'IOCL') for the distribution of LPG Cylinders. The agency was allotted to respondent under handicap quota. The applicant was not having funds, however, his uncle Gurdip Singh was having funds but he could not become partner as he (Gurdip Singh) was more than 45 years old. To overcome the age limit prescribed by IOCL, the agreement was executed between the applicant and respondent. Gurdip Singh made payment of ₹46 Lacs which included ₹33.5 Lacs by way of cheque and ₹12.5 lacs by cash. The respondent submitted

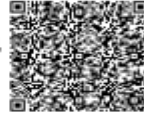


documents with IOCL with an intent to induct the applicant as partner. There were some objections by IOCL and respondent was subjected to penalty who paid penalty, however, did not submit documents for inducting the applicant as partner. As per terms and conditions of MOU, the matter needs to be referred to Arbitral Tribunal to resolve the dispute between the parties. The respondent has furnished affidavit dated 18.12.2017 wherein he has accepted the factum of applicant being partner of the distributorship.

3. *Per contra*, Mr. Nitin Jain, Advocate submits that applicant never paid alleged money and it was Gurdip Singh who had paid a sum of ₹30 Lacs to him. Gurdip Singh lodged FIR against the respondent and in the complaint lodged before the police, it was specifically mentioned that MOU is a fake piece of document and the respondent has cheated him. The respondent has already made payment along with interest as was received from Gurdip Singh. In this way, before the police, Gurdip Singh is claiming that aforesaid money was borrowed by respondent whereas in the instant application, the applicant is claiming that there was MOU for inducting him as partner in distributorship of IOCL.

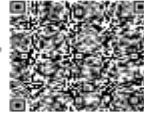
4. I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

5. The applicant is claiming that there was MOU comprising of arbitration clause and this Court should not look into the history and developments post execution of MOU. The jurisdiction of the Court is confined to scrutiny of execution of arbitration agreement. If there is valid arbitration agreement, the Court is bound to make appointment of an Arbitral Tribunal. The applicant has relied upon judgment of Supreme Court in '*Vidya Drolia and others Vs. Durga Trading Corporation*' 2021 (2) SCC 1.



6. From the perusal of complaint dated 02.05.2018 (Annexure R/1) filed by Gurdip Singh with Senior Superintendent of Police, Mohali, it is evident that in the said complaint Gurdip Singh had claimed that he and his nephew (petitioner) have been cheated and duped by the respondents herein. It was alleged in the complaint that a fake MOU in order to win over his faith and trust was prepared. No partnership deed was ever executed. In the complaint before police, Gurdip Singh specifically alleged that he has paid a sum of ₹46 Lacs to respondents and the said money was usurped on the assurance of interest/returns @ 24% per annum. A sum of ₹3.6 Lacs was returned in 2013 and remaining amount was not returned on the ground of financial constraints. Gurdip Singh was claiming return of principal amount along with interest. The police registered FIR No. 287 dated 11.11.2018 at Police Station Sohana, District SAS Nagar under different Sections of IPC and thereafter filed challan under Section 173 Cr.P.C. alleging commission of offence punishable under Sections 406, 420 and 120-B of IPC by the respondent herein.

7. Gurdip Singh got FIR registered against respondents on the ground that he has been cheated. The categorical stand was that MOU was fake and money was borrowed on the assurance of return/interest @ 24%. It is apt to mention here that alleged MOU was executed between applicant-Harcharan Singh and respondents whereas alleged payment of ₹46 Lacs was made by Gurdip Singh i.e. uncle of Harcharan Singh. The respondent till date has already paid a sum of ₹48,10,000/- to Gurdip Singh. Before this Court, the applicant is relying upon MOU and before police, the ground for claiming refund of ₹46 Lacs was that MOU was fake and money was borrowed on the assurance of return/interest @ 24% per annum. The applicant is claiming that MOU was for the purpose of inducting Harcharan Singh as partner in the Distributorship of

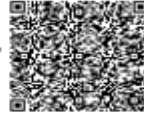


IOCL. Applicant-Harcharan Singh was nominee of his uncle because money was paid by his uncle (Gurdip Singh).

8. It is settled proposition of law that while adjudicating application under Section 11(6) of 1996 Act, the High Court is not supposed to examine disputed questions of fact and role of High Court is merely to examine existence of arbitration agreement. Hon'ble Supreme Court time and again has held that in view of amended law, the role of High Court is very limited while adjudicating application under Section 11(6) of 1996 Act.

9. This Court can make appointment of an Arbitrator if there is arbitration agreement as defined under Section 7 of 1996 Act. In the absence of Arbitration Agreement, this Court cannot invoke its power conferred by Section 11 of 1996 Act. The Supreme Court in *Mahanadi Coalfields Ltd. and another v. IVRCL AMR Joint Venture*, 2022 SCC OnLine SC 960, has clearly held that matter cannot be referred to an Arbitrator if there is no arbitration agreement.

10. Having held that Article 137 of Limitation Act is applicable to proceedings under Section 11(6) of 1996 Act, the Supreme Court in *Arif Azim Company Limited v. Aptech Limited*, (2024) 5 SCC 313; *BSNL v. Nortel Networks (India) (P) Ltd.*, (2021) 5 SCC 738 and *B&T AG v. Union of India*, (2024) 5 SCC 358 has held that though limitation is an admissibility issue, yet it is duty of the Courts to prime facie examine and reject non-arbitrable or dead claims so as to protect the other party from being drawn into a time consuming and costly arbitration process. While considering the issue of limitation in relation to a petition under Section 11(6) of the 1996 Act, the Courts should satisfy themselves on two aspects by employing a two-pronged test—first, whether the petition under Section 11(6) of the 1996 Act is barred by limitation and secondly, whether the claims sought to be arbitrated are *ex-facie*



dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of dispute to arbitration, the Court may refuse to appoint an Arbitral Tribunal.

11. Apex Court time and again has held that while exercising power under Section 11(6) of 1996 Act, High Court is required to apply its mind. There cannot be mechanical appointment of an Arbitral Tribunal. If there is fraud or suppression of facts or claim which is hopelessly barred by limitation or execution of arbitration agreement itself is doubtful, the Court should not act mechanically and pass order because appointment of an Arbitral Tribunal is going to involve valuable time and money of the respondents. In case High Court finds that claim is deadwood or arbitration agreement is outcome of fraud, the High Court may refuse to exercise its power.

In the case in hand, Gurdip Singh who had allegedly made payment to respondents, had specifically averred in his complaint before police that MOU was never executed and payment was made on the assurance of return with interest @ 24% per annum. The applicant herein is alleging that MOU was executed by both sides and payment of ₹46 Lacs was made for inducting applicant as partner in the distributorship of IOCL. The MOU was executed in the name of applicant because his uncle was more than 45 years old and could not become partner, as per rules and regulations of IOCL. On the basis of written complaint of Gurdip Singh, FIR was registered which culminated in challan under section 173 Cr.P.C. The respondents are facing trial because there are allegations against them that they have cheated applicant and his uncle. They have received a sum of ₹46 Lacs on the assurance of return/interest @ 24% per annum. They have returned small amount in 2013. As per record, the



respondents have already paid a sum of ₹48,10,000/- to Gurdip Singh (uncle of the applicant). The appointment of the Arbitrator relying upon MOU would amount to dragging the respondents to another litigation. They are facing trial alleging that they have received a sum of ₹46 Lacs from applicant and his uncle and did not return with interest. Whereas, if Arbitral Tribunal is constituted, they would face civil proceedings on the ground that they have received ₹46 Lacs for inducting Gurdip Singh/Harcharan Singh as partner but did not comply with MOU. The contradiction in the stand of applicant is writ large. It is further apt to notice that alleged MOU was executed in 2013 and applicant served notice under Section 21 of 1996 Act on 26.08.2019 and instant application was filed before this Court on 17.01.2023. The applicant since 2018 is pursuing criminal proceedings and has already received a sum of ₹48,10,000/- from the respondents. The claim also seems to be time barred.

12. In view of above discussions and findings, this Court is of the considered opinion that the present application deserves to be dismissed and accordingly dismissed.

28.03.2025
manoj

[JAGMOHAN BANSAL]
JUDGE

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