

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Arbitration Application No. 1 of 2026

K.S. Multi Facility Services Private Limited, (a Company registered under Provisions of the Companies Act, 1956/2013), having its Registered Office at Gali No. 12 Gandhi Nagar, P.O and P.S. Gandhi Nagar, Gurugram, Haryana 122001 through its authorized signatory namely, Anuj Kumar, aged about 24 Years, son of Shankar Sao, Aadhar no. 9366 9470 5294 resident of Kirigarh Saw Mohalla, Kirigara P.O. & P.S. Kirigara, District Ramgarh, Jharkhand – 829118.
..... Petitioner

Versus

Jharkhand State Beverages Corporation, through its Managing Director, having its office at Utpad Bhavan, Near new Police Centre, Kanke, P.O. & P.S.- Kanke, District Ranchi, Jharkhand-834006.
..... Respondent

CORAM : HON'BLE THE CHIEF JUSTICE

For the Petitioner : Mr Sumeet Gadodia, Advocate
Mr Prakhar Harit, Advocate
Mr Anish Lal, Advocate
For the Respondent : Mr Raunak Sahay, Advocate

04 /Dated: 08.05.2026

I.A. No. 6474 of 2026

1. This I.A. is an abuse of the process of the Court.
2. On the ground that the Managing Director is not available or is transferred, this is the second time that adjournment is applied for, even though, earlier adjournment was granted, subject to payment of cost of Rs. 10,000/-.
3. Surprisingly, even the costs have not been paid. The transfer of the Managing Director can hardly be a ground for the respondent-Corporation not to pay the cost of Rs. 10,000/-. This is a matter where the respondent is bent upon delaying the matter. The reasons given in the I.A. are far from convincing.
4. Learned counsel for the respondent states that the costs of Rs. 10,000/- will be paid by 2.30 this afternoon. This statement is accepted.

5. Another reason for the adjournment is that a counsel has been engaged. Apart from the fact that this cannot be a good ground for adjournment, it is necessary to note that in the order dated 10.04.2026, the learned Advocate General, who appeared on behalf of the respondent had made a statement that a reply will be filed by 22.04.2026 without seeking any further extension. Even at that time, the application for adjournment had not inspired much confidence. After recording this fact, adjournment was reluctantly granted, since the statement was made that costs of Rs. 10,000/- would be paid before the next date.

6. Today, none of the statements made by the learned counsel on behalf of the respondent have been complied with.

7. Mr. Gadodia, learned counsel for the applicant states that on one hand, adjustments are being applied for, and on the other hand, the respondent is acting adverse to the interests of the applicant. He further pointed out that the applicant had instituted a writ petition and the same was opposed on the ground of existence of an arbitration clause. Now that the applicant is seeking appointment of an Arbitrator, the matter is being unduly delayed.

8. For all the above reasons, this I.A. is dismissed.

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9. Heard the learned counsel for the parties.

10. This is an application seeking appointment of Arbitrator by invoking the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (said Act).

11. On two occasions, adjournments were applied for by the respondent for filing a reply. On the first occasion, the adjournment was granted, subject to certain conditions which the respondent have failed to comply. Without

complying with those conditions, today, once again, an I.A. was filed seeking adjournment. The said I.A. has since been dismissed by passing a speaking order.

12. The disputes have arisen between the parties. The applicant initially instituted W.P.C. (Filing) No. 10671 of 2025 in this Court seeking redressal.

13. Mr. Gadodia submitted that the respondent herein objected to the maintainability of the petition by pointing out that there is an arbitration clause in the agreement between the parties and, therefore, the applicant should be relegated to avail of the alternate remedy available to it under the law.

14. Therefore, the applicant, withdrew the writ petition with liberty to avail the remedy available to it under the law. The withdrawal was permitted with the liberty as prayed for. This is evident from the order dated 19.09.2025, disposing of W.P.(C) (Filing) No. 10671 of 2025.

15. After the disposal of the writ petition, the applicant, through its lawyer's notice dated 04.10.2025, invoked the arbitration clause 14 in the agreement dated 19.06.2024 and sought the appointment of an Arbitrator. Mr Gadodia submitted that the respondent, despite receipt of the legal notice dated 04.10.2025, neither consented to the appointment of any Arbitrator nor bothered even to file a reply to the notice dated 04.10.2025, by which the arbitration clause was invoked.

16. Clause 14 of the Agreement dated 19.06.2024 between the parties provides for the resolution of disputes through arbitration. Letter of Intent dated 30.03.2025 also extends and applies this agreement to Zone-10 in addition to Zone-3 and Zone-6, out of which the present disputes have arisen in the context of Zone Nos. 3, 6 and 10.

17. Accordingly, the existence of an arbitration agreement between the parties is not in dispute. Based upon such existence itself, objections were raised to the maintainability of the writ petition filed by the applicant herein. This petition was then withdrawn with liberty to avail the alternate remedy.

18. If the parties have agreed to resolve their disputes through arbitration, the arbitration proceedings must commence and conclude expeditiously. If frivolous adjournments are applied for, without even indicating the nature of the defence, then this objective would be completely frustrated.

19. Learned counsel for the respondent was given an opportunity to argue the matter. However, he stated that he has no instructions to argue on the merits in the absence of a reply. At least two opportunities were granted to file a reply. The appointment of an arbitrator cannot now be delayed or resisted on such grounds.

20. As it is, the scope of proceedings under Section 11 (6) of the said Act is quite limited to examining the existence of an arbitration agreement between the parties. Despite the appointment of an arbitrator, if the respondent has any serious objections, those objections are never preempted by this Court's appointment of an arbitrator. Considering this position, there is no point in indulging the respondent any further in this matter.

21. In the **Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In RE, (2024) 6 SCC 1**, the Hon'ble Supreme Court has observed the following: -

"163. We are of the opinion that the above premise of the Court in Vidya Drolia is erroneous because the omission of Section 11(6-A) has not been notified and, therefore, the said provision continues to remain in full force. Since Section 11(6-A) continues to remain in force,

pending the notification of the Central Government, it is incumbent upon this Court to give true effect to the legislative intent.

164. *The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. **Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement.** Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the Referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an Arbitral Tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engg where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard.*

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, 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 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 mini-trial 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.*

167. *Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the Arbitral Tribunal can*

"rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.

168. In *Shin-Etsu*, this Court was called upon to determine the nature of adjudication contemplated by unamended Section 45 of the Arbitration Act when the objection with regards to the arbitration agreement being "null and void, inoperative or incapable of being performed" is raised before a judicial authority. Writing for the majority, B.N. Srikrishna, J. held that Section 45 does not require the judicial authority to give a final determination. The Court observed that: (SCC p. 267, para 74)

"74. There are distinct advantages in veering to the view that Section 45 does not require a final determinative finding by the Court. First, under the Rules of Arbitration of the International Chamber of Commerce (as in force with effect from 1-1-1998), as in the present case, invariably the Arbitral Tribunal is vested with the power to rule upon its own jurisdiction. Even if the Court takes the view that the arbitral agreement is not vitiated or that it is not invalid, inoperative or unenforceable, based upon purely a prima facie view, nothing prevents the arbitrator from trying the issue fully and rendering a final decision thereupon. If the arbitrator finds the agreement valid, there is no problem as the arbitration will proceed and the award will be made. However, if

the arbitrator finds the agreement invalid, inoperative or void, this means that the party who wanted to proceed for arbitration was given an opportunity of proceeding to arbitration, and the arbitrator after fully trying the issue has found that there is no scope for arbitration. Since the arbitrator's finding would not be an enforceable award, there is no need to take recourse to the judicial intercession available under Section 48(1)(a) of the Act."

169. When the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement."

22. Section 11(6-A) of the Act remains effective, and the Court must uphold the legislative intent. Section 11(6-A) inter alia provides that the High Court, while considering any application under Section 11(6), shall, notwithstanding any judgment, decree or order of any Court, confine itself to the examination of the existence of an agreement.

23. Further, the Hon'ble Supreme Court has explained that the use of the term "examination" connotes that the scope of the power is limited to a *prima facie* determination. The Referral Courts need only consider one aspect to determine the existence of an arbitration agreement: whether the underlying

contract contains an arbitration clause that provides for the arbitration of the disputes that have arisen between the parties to the agreement.

24. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement based on Section 7. Similarly, the validity of an arbitration agreement, under Section 7, should be limited to the formal requirements, such as the requirement that the agreement be in writing. The court held that such an interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of the substantive existence and validity of an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.

25. The Hon'ble Supreme Court further held that although the burden of proving the existence of the arbitration agreement generally lies with the party seeking to rely on it, in jurisdictions such as India, which accept the doctrine of competence-competence, only *prima facie* proof of its existence need be adduced before the Referral Court. The Referral Court is not the appropriate forum for a mini-trial to determine the existence or validity of the 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.

26. The Hon'ble Supreme Court observed that Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The use of the word "examination" indicates that the legislature intended the Referral Court to inspect or scrutinise the parties' dealings to determine whether an arbitration agreement exists. Moreover, the expression "examination" does not connote or imply a labourious or contested inquiry. By contrast, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement.

A "ruling" connotes the adjudication of disputes after the admission of evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of an arbitration agreement, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement.

27. The Hon'ble Supreme Court further clarified that when the Referral Court renders a *prima facie* opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a *prima facie* view. If the Referral Court takes a *prima facie* view of the existence of an arbitration agreement, it still allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out *prima facie* non-existent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement.

28. Thus, considering the limited scope of these proceedings, I am satisfied that this application should be allowed and that the parties must be referred to arbitration. However, all contentions of the parties, including the defences by and on behalf of the respondent, are kept open with liberty to the respondent to raise the same before the Arbitrator. The mere appointment of an arbitrator should not be construed as either a waiver of such objections or as an indication that this Court overruled such objections.

29. Accordingly, Hon'ble Justice N.N. Tiwari, former Judge of this Court, residing at 673F, Jatin Chandra Bose Road, Burdwan Compound, Lalpur, Ranchi-834001, is appointed as the Arbitrator to arbitrate the dispute between the parties. This is because the learned counsel for the respondent states that in one of the disputes between the parties, Hon'ble Justice N.N. Tiwari is

already appointed as an Arbitrator. Even if this is not correct, there is no difficulty in appointing Hon'ble Justice N.N. Tiwari as an arbitrator in this matter.

30. Learned Arbitrator is requested to issue the necessary declaration in terms of section 12(2) read with 5th and 6th Schedule of the said Act before entering upon the arbitration proceedings. Learned Arbitrator's fees shall be in accordance with the 4th Schedule of the said Act. Such fees and arbitration expenses shall be equally borne by both parties.

31. Learned Arbitrator would endeavor to conclude the arbitration proceedings as expeditiously as possible, having regard to the mandate under Section 29 (A) of the said Act.

32. All contentions of the parties are left open for the learned Arbitrator to decide.

33. The Registry is directed to intimate the learned Arbitrator so appointed about this order within fifteen days from the uploading of this order. The parties are also at liberty to place this matter before the learned Arbitrator.

34. This arbitration application is disposed of in the above terms. Pending I.A, if any, will not survive and is disposed of. No order for costs.

(M.S. Sonak, C.J.)

May 08, 2026
Ranjeet / R.Kr.
NAFR