

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arbitration Application No. 3 of 2026

M/s. Hindustan Dorr-Oliver Limited, a company incorporated under the Companies Act, 2013 having its Registered Office at 404-405, 4th Floor, Sabari Sammriddhi, Behind Maitri Park ST Bus Stand, Sion-Trombay Road, Chembur, Mumbai - 400071, through its authorised representative and Head Commercial - Mr Sri Kumar Malani, aged about 51 years, son of Govind Das Malani, resident of 2-4-51, Malani Building, M G Road, Secunderabad, Secunderabad, P.O. - Secunderabad, P.S. Ramgopalpet, District Hyderabad, State - Telangana,

... .. Applicant

Versus

M/s. Uranium Corporation of India Limited, a Government Company incorporated under Section 617 of the Companies Act, 1956 having its Registered Office at Jaduguda, P.O.- Jaduguda Mines, District-East Singhbhum, State - Jharkhand, PIN - 832102

... .. Respondent

CORAM: HON'BLE THE CHIEF JUSTICE

For the Applicant: Mr. Anoop Kumar Mehta, Advocate
Mr. Manish Kumar, Advocate
Mr. Pratyush, Advocate
For the Respondent: Mr. Sudarshan Shrivastava, Advocate

05 /Dated: 08.05.2026

1. Heard learned counsel for the parties.
2. This is an application seeking appointment of an Arbitrator by invoking the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996 (the said Act).
3. According to the applicant, disputes have arisen between the parties to and in connection with the contract agreement dated 20th March 2009 (Annexure-2 to this application).
4. Clause 7 of the agreement reads as follows:-

"Both parties shall make best endeavour to settle amicably among themselves any dispute that may arise on any matter arising out of or in connection with this contract. In the unlikely case that the parties are not able to come to a mutual settlement either of them shall seek arbitration. Then

it is expressly and agreed between the parties that any such dispute or difference arising out of or in connection with the Contract shall be referred to arbitration and the arbitration proceedings shall be governed by the relevant clause of the Agreement.”

5. In addition to Clause -7, reference can also be made to Clause 46 of the NIT, which is accepted to be a part of the agreement.

6. Clause 46 reads as follows:-

“46.0 DISPUTES AND ARBITRATION

46.1 Disputes

If at any time any questions, dispute or difference (hereinafter referred to as a "Dispute") shall arise between the Purchaser and the Contractor, either party shall, as soon as reasonably practicable, give to the other notice in writing of the existence of such Dispute specifying its nature and the point of issue. The parties shall attempt, within a period of sixty (60) days after receipt by one party of a notice from the other party of the existence of the Dispute, to settle such Dispute amicably in the first instance by mutual discussions between the parties.

46.2 Arbitration

Notwithstanding anything contained in this Contract, all questions, disputes or differences whatsoever which is not amicably settled as per clause no 46.1 above, between the parties to the Contract, arising out of or relating to the construction, meaning and operation or interpretation of provision of the Contract or matters related thereto whether during the currency of the Contract or its failure or after the completion of the Contract, shall be referred to the adjudication of Sole arbitrator to be nominated and appointed by the Chairman and Managing Director of the Purchaser. It will be no objection to any such appointment even if the Arbitrator so appointed is an employee of the Purchaser.”

7. The applicant, vide notice dated 04.09.2025, invoked the arbitration clause and sought the resolution of disputes through arbitration. The

respondent, by its response dated 1st November 2025, disagreed with the applicant herein.

8. The contents of the response dated 1st November 2025 (Annexure-25 at page 298) are transcribed below for the convenience of reference:-

“With reference to your letter / notice dated 04-10-2025 on behalf of your client, it is bring to your kind notice that since the claim mentioned therein is related to an agreement executed dated 20-03-2009, which according to UCIL is now a stale agreement as such we shall not treat your letter/notice regarding as valid.”

9. From the above, at least *prima facie*, the existence of the arbitration agreement was never disputed by the Respondent. The scope of proceedings under Section 11(6) of the said Act is quite limited, and the same is confined to examining the existence of an arbitration agreement.

10. However, Mr Sudarshan Shrivastava, the learned counsel for the respondent, submitted that the applicant's claim, apart from being false and frivolous, is highly belated. He submitted that the applicant left the work incomplete and has belatedly sought to invoke the arbitration clause.

11. Apart from the above objection, Mr Shrivastava referred to the statements made and objections raised in paragraphs 12 to 20 of the counter affidavit filed on behalf of the respondent.

12. The contents of these paragraphs are transcribed below for the convenience of reference: -

“12. That thereafter, a Corporate Insolvency Resolution Process vide CP No.596/1&BP/NCLT/MAH/2017 was filed before the National Company Law Tribunal (NCLT), Mumbai Bench, Mumbai under Insolvency and Bankruptcy (Applications and Adjudicating Authority), Rules 2016. NCLT has pronounced its order dated 21/04/2017 that till the completion of the corporate insolvency resolution process or until the Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of

corporate debtor under section 33 as the case may be. Sri Amit Gupta informed UCIL through an email dated 09/04/18 that the company is under liquidation process, hence to release the amount, which was withhold by UCIL

13. *That NCLT Bench has also appointed Sri Amit Gupta as Interim Resolution Professional (Liquidator) to carry out the functions as mentioned under Insolvency & Bankruptcy Code. As per the provisions of the Code and NCLAT order dated 25/06/2018, the Liquidator has been assigned the powers of the Board of Directors, key managerial persons of HDOL.*

14. *That UCIL has communicated to the Liquidator through an email dated 03/09/2020 that the encashment of Performance Bank Guarantee (PBG) is rightly encashed by UCIL, as it was failure of HDOL to demonstrate the performance test and extra expenditure incurred cannot be adjusted from the encashed PBG amount, as there is no provision in the contract. Further, UCIL will go ahead with completing the pending work as per the scope of the work at the risk and cost of HDOL and the contract will be closed subsequently as agreed by HDOL.*

15. *That Sri Amit Gupta communicated through a letter dated 21/02/2023 that under section 35(f) of IBC, 2016 and regulation 33 of Liquidation process the company was sold as a "going concern in liquidation" vide E-auction held on 29/07/2022 to M/s. Pan India Tubes Pvt. Ltd., Hyderabad. The company is now under process of resuming normal operation under the management of the new owner.*

16. *That M/s. Pan India Tubes Pvt. Ltd., Hyderabad has communicated to UCIL that they are acquired HDOL through e-auction. Hence, requested to release the amount withheld. The then Chief Manager (Legal) has communicated to M/s. Pan India Pvt. Ltd., through a letter dated 27/03/2023 that the communication sent to Sri Amit Gupta dated 03/09/2020 still stick by UCIL, as this was not payable.*

17. *That now Hon'ble NCLT Mumbai Bench has disposed the matter 10/10/2023, which was pending and passed an order, is as follows:*

"The Liquidation Process is declared to have come to an end and Corporate Debtor is taken out of rigours of

Liquidation process upon having been sold as a going concern. Consequently, the moratorium under section 33(5) shall cease to be in forced".

18. *That thereafter, an Arbitration Notice issued by HDOL dated 04/10/2025 by invoking Clause 46.2 of General Conditions under Section V of Volume I of the Package No. UCTL 2: Annexure - A of the Contract Agreement dated 20.03.2009 stating inter alia that to resolve the disputes Mr. Jyotirmay Bhattacharya, Former Chief Justice of High Court of Calcutta be appointed as a sole Arbitrator under section 21 read with Section 12(5) of Arbitration and Conciliation Act, 1996.*

19. *That it is to say and submit that it was duly communicated to the applicant that as the claims put forth by the applicant is a stale and time barred claim and moreover, that there is no existence of M/s HDOL, as the said company purchased through e-auction by M/s. Pan India Pvt. Ltd. Further M/s. Pan India Pvt. Ltd., was not a signatory while entering into a contract and is not a party to the contract.*

20. *That it is stated and submitted that in the above circumstances M/s. HDOL cannot request to the Hon'ble High Court for appointment of Arbitrator, as it is not in existence and M/s. Pan India Pvt. Ltd., also cannot request the court for appointment of Arbitrator, as it was not a signatory to the contract. Hence, the appointment of an arbitrator, which is unwarranted and this Hon'ble court may not pass any order appointing any arbitrator to arbitrate the alleged dispute mentioned in this petition."*

13. Based on the above, Mr Shrivastava submitted that the applicant herein was involved in the Corporate Insolvency Resolution Process. He submitted that, in terms of the orders of the NCLT, the applicant has been virtually taken over by M/S Pan India Pvt. Limited. He therefore submitted that it is not open to the present applicant to seek appointment of an Arbitrator. Further, he has submitted that even M/s Pan India Pvt. Ltd. cannot seek appointment of an Arbitrator because, admittedly, the said company was not a signatory to the agreement/work order.

14. Upon considering the above submissions made on behalf of the respondent, I am satisfied that such submissions cannot be accepted at this stage. As noted earlier, the limited scope of proceedings under Section 11(6) of the said Act is to examine the existence of an Arbitration clause. In the present case, given clause 7 of the agreement, the existence of the arbitration clause, at least prima facie, cannot be doubted. The applicant and the respondents are the parties to such an agreement.

15. The issues of the claim being belated or not being maintainable at the behest of the present applicant are matters that can always be investigated and decided by the Arbitral Tribunal once the same is constituted. The mere fact that an Arbitrator is appointed does not mean that all such defences, including the defence concerning the very competence of the Arbitrator to adjudicate such disputes, are waived or settled. All such defences can certainly be raised before the Arbitrator, even though this Court allows this application and refers the parties to arbitration.

16. 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."

17. From the above, it is clear that Section 11(6-A) of the said Act continues to remain in force, and it is incumbent upon the Court to give true effect to 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.

18. 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.

19. 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, 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 substantive existence and validity of an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.

20. The Hon'ble Supreme Court further held that though the burden of proving the existence of the 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 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.

21. The Hon'ble Supreme Court pointed out that 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 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.

22. 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.

23. 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 now raised 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.

24. Accordingly, this application is disposed of by passing the following orders: -

- A. Hon'ble Mr. Justice C. Praveen Kumar, Former Judge of High Court of Andhra Pradesh, residing at Plot No. 149B, MPs and MLA Colony, Road No. 10C, Jubilee Hills, Hyderabad 500033

[email-praveenchagari@yahoo.co.in] is hereby appointed as the sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the agreement referred to above;

- B. All contentions and objections on behalf of the respondent, including the contentions now raised in opposition to this application, are left open for decision by the Arbitral Tribunal so constituted;
- C. A copy of this order should be communicated to the learned sole Arbitrator by the advocates for the applicants within twenty days from today. The applicants shall provide the parties' contact and communication particulars to the Arbitral Tribunal, along with a copy of this order;
- D. The learned sole Arbitrator is requested to forward the statutory statement of disclosure under Section 11(8) read with Section 12(1) of the said Act to the parties within a period of two weeks from the receipt of a copy of this order;
- E. The parties shall appear before the learned sole Arbitrator on such date and at such place to obtain appropriate directions with regard to the conduct of the arbitration, including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings, etc.;
- F. At the above-referred meeting, the parties shall provide the Arbitral Tribunal with a valid and functional email address and the mobile numbers of the respective advocates of the parties. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration and;

G. The Arbitrator's fees shall be in terms of the 4th Schedule of the said Act. All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to the costs.

25. Pending I.A.s, if any, stand disposed of. No costs.

26. All concerned can act on an authenticated copy of this order.

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

May 08, 2026

A.F.R.

APK/VK

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