

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/217/2025
RVR-MEGHRAJ PRADHAN (JV)
REPRESENTED BY
SANJIT KUMARSWARNKAR
VS
NATIONAL PROJECTS CONSTRUCTION CORPORATION LIMITED AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 9th December 2025.

Appearance:-

Mr. Sanjay Mukherjee, Advocate
Ms. Priyadip Paul, Advocate
Mr. Chiranjit Pal, Advocate
... for the petitioner.

Mr. Debojyoti Basu, Senior Advocate
Mr. Diptomoy Talukder, Advocate
Mr. Abir Bhattacharya, Advocate
... for the respondents.

The Court:- This is an application for appointment of an arbitrator in terms of Clause 76 of the General Conditions of Contract (GCC) which was entered into between one Roshan Agarwal and the respondents.

Mr. Mukherjee, learned advocate for the petitioner submits that although the petitioner was not a signatory to the GCC, the Letter of Acceptance and the Letter of Award for the work of construction and up-gradation of existing lane to 2 lane road with paved shoulder (NH 717A) including geometric improvement from Ranipool to Pakyong KM 0.000 to KM 06.000, referred to the GCC and Clause 6 specifically provided that all the terms and conditions and technical specifications shall be the same as mentioned in the said document. Terms relating to time for completion, compliances to be

undertaken by the petitioner and furnishing of the performance guarantee were to be guided and governed by the provisions of the GCC. Mr. Mukherjee submits that once the GCC is referred to in the Letter of Award, which is in the nature of an agreement between the parties, the arbitration clause i.e., clause 76 of the GCC shall also govern the dispute between the parties. The disputes allegedly arose, inter alia, out of termination of the work awarded, non-payment of outstanding dues and non-refund of the security deposit. The petitioner submits that the claim is of more than Rs.68 crores.

Mr. Basu, learned senior advocate appearing for the respondents, submits that the Letter of Award only deals with applicability of certain terms and conditions of the GCC, but the arbitration clause has not been made applicable. The GCC was never signed by the petitioner.

The issue as to whether the arbitration clause in the GCC will be applicable or not is not required to be gone into, as this discussion will be completely academic. In two other matters, where interpretation of the arbitration clause in the GCC was before this Court, this Court held that Clause 76 was not an arbitration clause in terms of Section 7(1) of the Arbitration and Conciliation Act, 1996.

In the matter of ***Roshan Agarwal Vs National Projects Construction Corporation Limited (NPCCL) & Anr.*** decided in ***AP-COM 218 of 2025***, the relevant portions are quoted below:-

“12.In the present case, clause 76 is incorporated under the head Arbitrator, and provides that arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, with all modifications, amendments and re-

enactments. This court is of the view that, a mere heading in a clause will not make the said clause an arbitration agreement. From a comprehensive reading of the entire contract, it appears that there is no dispute resolution clause. No choice of forum by the parties, is reflected either in the GCC or in the Letter of Award. There is nothing on record to show that the parties had agreed to resolve any dispute or difference which may arise during the execution of the subject contract or thereafter, by an independent, impartial and private tribunal. Even if there is no mention that the arbitrator will be an independent tribunal and the parties will be bound by the award in the clause, at least, there should have been a clause which would indicate that the parties were in agreement to refer any dispute arising out of the said contract, to arbitration. The GCC does not specifically contain an arbitration agreement, but only refers to the statute. An agreement to refer disputes to arbitration, should have been mentioned either in the Letter of Award or in any communication between the parties, i.e., letters, telex, telecommunications or email. This is not the case here.

12. The law as laid down in ***Enercon (India) (supra)*** is that, if a detailed semantic and syntactical analysis of words in a commercial contract led to a conclusion that flouted business common sense, the agreement must be made workable, so as to yield to business common sense. However, in the instant case, the GCC is devoid of any dispute resolution clause. There is no indication at all that the parties had concurred to resolve their dispute by reference to arbitration. It will not be a pedantic approach on the part of the Court in holding that there is no arbitration agreement. Such finding will not be contrary to the accepted norm of “business common sense”. In fact, the GCC does not speak of any method and mechanism for dispute resolution at all.

Relevant paragraphs of ***Enercon (India)(Supra)*** are quoted below :-

“**52.** Dr Singhvi then submitted that leaving aside the question of unworkability of the arbitration clause for the moment, the intention of the parties in the instant case may be determined from the following clauses of IPLA:

“17. *Governing law*

17.1 This agreement and any dispute of claims arising out of or in connection with its subject-matter are governed by and construed in accordance with the law of India.

18. *Disputes and arbitration*

18.1 All disputes, controversies or differences which may arise between the parties in respect of this agreement including

without limitation to the validity, interpretation, construction performance and enforcement or alleged breach of this agreement, the parties shall, in the first instance, attempt to resolve such dispute, controversy or difference through mutual consultation. If the dispute, controversy or difference is not resolved through mutual consultation within 30 days after commencement of discussions or such longer period as the parties may agree in writing, any party may refer dispute(s), controversy(ies) or difference(s) for resolution to an Arbitral Tribunal to consist of three (3) arbitrators, of whom one will be appointed by each of the licensor and the licensee and the arbitrator appointed by the licensor shall also act as the presiding arbitrator.

18.2 ***

18.3 The proceedings in such arbitration shall be conducted in English. The *venue* of the arbitration proceedings shall be in London. The arbitrators may (but shall not be obliged to) award costs and reasonable expenses (including reasonable fees of counsel) to the party(ies) that substantially prevail on merit. The provisions of the Indian Arbitration and Conciliation Act, 1996 shall apply.

The reference of any matter, dispute or claim or arbitration pursuant to this Section 18 or the continuance of any arbitration proceedings consequent thereto or both will in no way operate as a waiver of the obligations of the parties to perform their respective obligations under this agreement.”

13. Interpreting the arbitration clause in the said agreement, the Hon’ble Apex Court held that it was a well-recognized principle of arbitration jurisprudence in almost all jurisdictions, especially, those following the Uncitral Model Law, that Courts should play a supportive role in encouraging arbitration, by following the practice of least intervention by Courts. Upon considering the principles behind the enactment of the law, the Hon’ble Apex Court found that an arbitration clause could not be frustrated on the ground that it was unworkable and any obvious omission could be set right by Court. The clause which was being considered by the Hon’ble Apex Court is quoted below :-

“18 Disputes and arbitration

18.1 All disputes, controversies or differences which may arise between the parties in respect of this agreement including without limitation to the validity, interpretation, construction performance and enforcement or alleged breach of this agreement, the parties shall, in the first instance, attempt to resolve such dispute, controversy or difference through mutual

consultation. If the dispute, controversy or difference is not resolved through mutual consultation within 30 days after commencement of discussions or such longer period as the parties may agree in writing, any party may refer dispute(s) for resolution to an Arbitral Tribunal to consist of three arbitrators, of whom one will be appointed by each of the licensor and the licensee and the arbitrator appointed by the licensor shall also act as the presiding arbitrator.

18.2 * * *

18.3 *The proceedings in such arbitration shall be conducted in English. The venue of the arbitration proceedings shall be in London. The arbitrators may (but shall not be obliged to) award costs and reasonable expenses (including reasonable fees of counsel) to the party(ies) that substantially prevail on merit. The provisions of the Indian Arbitration and Conciliation Act, 1996 shall apply.*

The reference of any matter, dispute or claim or arbitration pursuant to this Section 18 or the continuance of any arbitration proceedings consequent thereto or both will in no way operate as a waiver of the obligations of the parties to perform their respective obligations under this agreement.”

14. The issue before the Hon’ble Apex Court was unworkability of the arbitration clause on the ground that there was a confusion with regard to venue and the governing law.

15. In ***Visa International Ltd. Vs. Continental Resources (USA) Ltd.*** reported in **(2009) 2 SCC 55**, it was held that no party can be allowed to take advantage of an inartistic drafting of the arbitration clause in any agreement, as long as, there is a clear intention of the parties to go for arbitration in case of future disputes. Here, such intention is missing.

16. In the present situation, the surrounding circumstances do not persuade this court to hold that the parties had intended to refer their disputes to arbitration. Such agreement is absent. This is neither a case of inarticulate drafting of an arbitration clause nor a case of ambiguity in the said clause.

17. Under these circumstances, this Court does not find Clause 76 to be a binding arbitration clause.”

It is also submitted that the Special Leave Petition preferred from the above decision was dismissed.

In the matter of **Karma Norbu Bhutia vs National Projects Construction Corporation Ltd. (NPCCL) & Anr.** decided in **AP-COM 1081 of 2024**, the court again decided a similar issue. The relevant portions of the judgment are quoted below:-

8. "Having considered the rival contentions of the parties and the documents on record as also the GCC, this Court finds that clause 76 has been incorporated just after clause 75. Clause 75 is the Force Majeure clause. Clauses 76.0 and 76.1 are quoted below:

"76.0 ARBITRATION

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply under this clause.

76.1 JURISDICTION

The agreement shall be executed at Kolkata on non-judicial stamp paper and the Courts at Kolkata alone will have jurisdiction to deal with matters arising there from, to the exclusion of all other courts."

9. Clause 76 of the said agreement is not an arbitration clause as defined under Section 7 of the Arbitration and Conciliation Act, 1996.

10. Section 7 of the Arbitration and Conciliation Act, 1996 is quoted below:-

" 7. Arbitration agreement:- (1) *In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not."*

(2) *An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*

(3) *An arbitration agreement shall be in writing.*

(4) *An arbitration agreement is in writing if it is contained in-*

(a) *a document signed by the parties;*

(b) *an exchange of letters, telex, telegrams or other means of telecommunication (including communication through electronic means) which provide a record of the agreement; or*

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration clause if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

11. Thus, the first ingredients of a valid arbitration agreement, is a meeting of minds of the parties who are in a definite commercial relationship, to refer all or certain disputes which may arise between them in discharge of the legal business relationship, to arbitration. It is not in doubt that the parties hereto had entered into a business relationship and a contract had been awarded to the petitioner. An agreement contained the GCC was made applicable. However, clause 76 of the GCC, which is quoted above and which is interpreted by the petitioner to be an arbitration clause, does not indicate that the parties had agreed to refer all present and future disputes arising during or after the execution of the subject contract, to arbitration.
12. The law is well-settled. The arbitration agreement does not have to be in any particular form. It is also well-settled that, words like "arbitrator or arbitration" were not required to be mentioned for a clause to be an arbitration clause. What is most important is that, either from the contract or from any other written document, telex or telecommunications or email, it should be evident that the parties were ad idem that, in case there was any difference or dispute amongst them in the discharge of their contractual obligation, they shall refer such dispute for settlement by an arbitrator or by a private tribunal. In the present case, although the clause provides that the arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 with all modifications, amendments and re-enactments, I hold that, a mere heading in a clause, will not make the said clause an arbitration. I do not find from a comprehensive reading of the entire contract that, there is any clause which deals with dispute resolution. What the parties had agreed to do, in case disputes and difference arose, has not been stated either the GCC or in the letter of intent. There is nothing on record to show that the parties had either agreed or decided that any dispute or difference which may arise during the execution of the said contract or thereafter, shall be referred to arbitration. Even if the other requirements, i.e., the Tribunal to be an independent Tribunal and that the parties had undertaken to be bound by the award etc. were missing, at least, there should have been a clause

which indicated that the parties were in agreement to refer any dispute arising out of the said contract, to arbitration. Even if the GCC does not specifically contain an arbitration agreement, but an agreement could have been entered into later by a signed document or by exchange of letters, via telex or telecommunications or email. This is not the case here.

13. In the decision of ***Enercon (India) Ltd. and Ors. (supra)***, the Hon'ble Apex Court held that the courts have to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or construing an arbitration agreement or an arbitration clause. It is the duty of the Court to make the same workable within the permissible limits of law, without stretching it beyond the boundaries of recognition. A common sense approach has to be adopted to give effect to the attitude of a reasonable business person, having business common sense, as well as being equipped with the knowledge that may be peculiar to the business venture. However, the said judgment also clarifies that the parties must express an intention to arbitrate. The intention to arbitrate can be expressed by the parties in the manner provided under Section 7, i.e., by exchange of letters, telex, telegrams or other means of telecommunications which can provide a record of such agreement. This has already been discussed above. No such record of an agreement is available. Mr. Roy has not referred to any such document, either. Thus, one thing is clear from the above judgment relied upon by Mr. Roy that, there has to be a meeting of minds between the parties to a contract on the issue that, in the event of any dispute or difference, the parties shall refer the dispute for settlement by a tribunal.
14. The law as laid down by judicial authorities is that, if a detailed semantic and syntactical analysis of words in a commercial contract leads to a conclusion that flouts business common sense, it must be made to yield to business common sense. In the instant case, when the GCC is devoid of any dispute resolution clause and the clauses do not indicate that the parties had decided to resolve their dispute by reference to arbitration, this Court will not be held guilty of taking a pedantic approach, contrary to the accepted norms of "business common sense". In fact, the GCC does not speak of any method and mechanism for dispute resolution at all.
15. In *Visa International Ltd. Vs. Continental Resources (USA) Ltd. (supra)*, it was held that no party can be allowed to take advantage of an inartistic drafting of the arbitration clause in any agreement, as long as, there is a clear intention of the parties to go for arbitration in case of future dispute. In the instant case, there is no dispute resolution clause at all. What is required to be gathered is the intention of the parties from the surrounding circumstances, including the conduct of the

parties. In the instant case, the surrounding circumstances and the conduct of the parties do not indicate that any such intention to refer the dispute to arbitration ever existed.

16. The intention of the parties, as has already been discussed hereinabove, can be gathered from the correspondence exchanged between them and/or from surrounding circumstances. In the present situation, the surrounding circumstances do not pursue this court to hold that the parties have intended to refer any dispute to arbitration.”

Under such circumstances, this application is dismissed.

However, the petitioner is always at liberty to pursue appropriate remedy in accordance with law before the appropriate forum.

(SHAMPA SARKAR, J.)

S. Kumar