



WEB COPY

Arb.O.P.(Com.Div.)No.142 of 2025

In the High Court of Judicature at Madras

Reserved on
15.9.2025Delivered on :
22.9.2025

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) No.142 of 2025

Mr.M.Arumugam,
No.60, Journalist Colony,
Thiruvanmiyur,
Chennai-600041.

...Petitioner

Vs

M/s.CP Foods, rep.by its
Partner Mr.S.Manikanda
Prabhu, No.52, South Car
Street, Virudhunagar.
626001/

...Respondent

PETITION under Section 11(5) of the Arbitration and Conciliation Act, 1996 praying to appoint a suitable person as the sole Arbitrator to adjudicate upon and resolve the disputes inter-se between the petitioner and the respondent and under offer letter dated 01.3.2015 and for costs.

For Petitioner : Mr.V.Raghavachari, SC for
Mr.B.Sudarshan

For Respondent : Mr.M.S.Krishnan, SC for
Mr.Abhinav Parthasarathy

ORDER



Arb.O.P.(Com.Div.)No.142 of 2025

WEB COPY

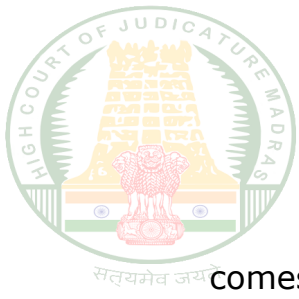
This petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (for short, the Act) for appointment of a sole arbitrator to adjudicate upon and resolve the disputes between the petitioner and the respondent under offer letter dated 01.3.2015.

2. Heard both.

3. The case of the petitioner is as follows :

(i) The petitioner is a trader. Since 2011, the petitioner is involved in the services of procuring Dhall varieties and other essential commodities to the respondent through tenders. During the year 2015, the respondent promised and offered to compensate the prioritized services of the petitioner. In this regard, the respondent issued an offer letter dated 01.3.2015 and it was accepted by the petitioner vide letter dated 02.3.2015. Based on the offer made by the respondent, the petitioner sincerely and meticulously worked giving top priority to the respondent by procuring orders for about 79,030 Metric Tons of Dhall varieties and supplied to other companies on behalf of the respondent between 2015 and 2022.

(ii) The total commission charges payable to the petitioner



Arb.O.P.(Com.Div.)No.142 of 2025

WEB COPY

comes to Rs.7,13,32,000/-, out of which, the respondent paid only a sum of Rs.1,23,00,500/- and retained the major portion of the sum, which remained due and payable to the petitioner. During December 2023, the petitioner approached the respondent regarding settlement of the balance amount. However, the respondent was evasive and was dodging the payments.

(iii) Hence, a legal notice dated 24.6.2024 was issued to the respondent calling upon them to settle the entire balance outstanding. To the said legal notice, the respondent sent a reply dated 23.7.2024 making untenable claims. In the light of the above, a trigger notice dated 12.12.2024 came to be issued by the petitioner to the respondent under Section 21 of the Act for appointment of an arbitrator. Pursuant to that, the respondent sent a reply dated 13.1.2025 objecting to that and refused to give consent to the proposed arbitration. It is under these circumstances, the above original petition has been filed before this Court.

4. When the matter came up for hearing on 03.9.2025, this Court passed the following order :

"This Court, heard Mr.V.Raghavachari,



WEB COPY



Arb.O.P.(Com.Div.)No.142 of 2025

learned Senior counsel appearing on behalf of the petitioner and Mr.Abhinav Parthasarathy, learned counsel for the respondent.

2. The entire issue revolves upon the interpretation of the word "may" found in a letter dated 01.03.2015.

3. The learned counsel for the respondent by relying upon the judgment of the Apex Court in BGM and M-RPL-JMCT(JV) Vs. Eastern Coalfields Limited dated 18.07.2025 submitted that the word 'may' gives an option to the party to either accept the proposal given by the other side to refer the matter for arbitration or if the parties do not accept, the parties can only go before the regular Court and the other party cannot insist to refer the dispute for arbitration.

4. Per contra, the learned Senior counsel appearing for the petitioner submitted that the respondent on the one hand is denying the genuineness of the offer letter dated 01.03.2015 and on the other hand, he is trying to interpret the letter to suit his case. He further submitted that a plain reading of the offer letter makes it clear that the parties must first resort to settlement by mutual talks and if the same fails, the dispute must be resolved through arbitration. It is contended that the word 'may' does not give any other option to the parties.



WEB COPY



Arb.O.P.(Com.Div.)No.142 of 2025

5. *This Court, after hearing the learned counsel on either side expressed its mind to the learned counsel for the respondent that if the respondent is questioning the genuineness of the offer letter dated 01.03.2015, such a stand has to be taken till the end and the respondent cannot on the one hand deny the offer letter after questioning its genuineness and on the other hand also be permitted to interpret that letter.*

6. *This Court further clarified that if the definite case of the respondent is that the offer letter dated 01.03.2025 is not a genuine document, it will always be left open to the arbitrator to refer the original document to expert opinion and that will resolve the entire issue.*

7. *The learned counsel for the respondent seeks for some time to take instructions in this regard.*

8. *Post this case on 15.09.2025, under the caption "for orders".*

5. When the matter was taken for hearing on 15.9.2025, the learned Senior Counsel appearing on behalf of the respondent placed reliance on the following judgments :



WEB COPY



Arb.O.P.(Com.Div.)No.142 of 2025

"(i) of the Hon'ble Supreme Court in the case of **Wellington Associates Ltd. Vs. Kirit Mehta [reported in 2000 (4) SCC 272];**

(ii) of the Hon'ble Apex Court in the case of **Jagdish Chander Vs. Ramesh Chander [reported in 2007 (5) SCC 719];**

(iii) of a learned Single Judge of the Bombay High Court in the case of **Quick Heal Technologies Ltd. Vs. NCS Computech Private Limited [reported in 2020 SCC OnLine Bombay 687];**

(iv) of a learned Single Judge of the Delhi High Court in the case of **Ashwani Kumar Vs. Scraft Products Pvt. Ltd. [Arbitration Petition No. 488 of 2020 dated 26.7.2021];**

(v) of a learned Single Judge of the Madhya Pradesh High Court in the case of **Trbex Impex Pvt. Ltd. Vs. Ashok Fine Spun through its Director Mr.Ashish Doshi**



WEB COPY



Arb.O.P.(Com.Div.)No.142 of 2025

[reported in 2024 SCC OnLine MP 2936];

(vi) of a learned Single Judge of Rajasthan High Court in the case of **In the matter of the Companies Act, 1956 Vs. M/s.Kota Straw Board (P) Ltd., Gamanpura, Kota [reported in 1971 Rajasthan Law Weekly 151]; and**

(vii) of the Hon'ble Apex Court in the case of **BGM & M-RPL-JMCT (JV) Vs. Eastern Coalfields Ltd. [Civil Appeal No. 9795 of 2025 dated 18.7.2025 arising out of S.L.P.(C) Diary No.21451 of 2024 dated 18.7.2025]"**

and contended that the very wordings employed in the offer letter dated 01.3.2015 make it clear that unless and otherwise both the parties consent, the matter cannot be referred for arbitration.

6. The specific case of the petitioner is that the appointment of arbitrator is based on the offer letter dated 01.3.2015, which was stated to have been issued by the respondent to the petitioner, that it



Arb.O.P.(Com.Div.)No.142 of 2025

WEB COPY

was accepted by the petitioner vide letter dated 02.3.2015 and that therefore, there is an agreement between the parties in terms of Section 7 of the Act.

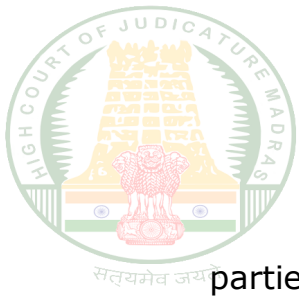
7. The relevant portion in the offer letter dated 01.3.2025 reads as follows :

"In case of any disputes that may arise out of this offer and transaction, it will be settled by mutual talks, failing which, the disputes may be resolved through arbitration at Chennai."

8. The learned Senior Counsel appearing on behalf of the petitioner submitted as follows :

(a) There are only two options available to the parties for resolving the disputes. The first option is to make an attempt for settlement by mutual consent; and the second option is to refer the dispute to arbitration for resolving the disputes. The Court must look into the intention of the parties while deciding upon the arbitration clause.

(b) The judgments that were relied upon by the respondent will not apply to the present case, since, in any of those judgments, the



WEB COPY

parties were given the option of going before either the arbitrator or the civil court. The terminology that was used in each one of those contracts, which formed the subject matter in those cases, has to be independently considered. There cannot be a general proposition of law that wherever the words '**may be referred**' are used, it is not always decisive and the Court can, in fact, consider the word '**may**' to mean '**shall**' on the facts of the case.

(c) In the case in hand, the specific paragraph in the offer letter is not merely an enabling clause, but it has actually defined the options that are available to the parties for resolving the disputes.

9. On the contrary, the learned Senior Counsel appearing on behalf of the respondent submitted as follows :

(a) The offer letter contains two parts. The first part constitutes a mandatory obligation since it used the word '**will**' for settling the disputes by mutual talks. However, in the second part, the word '**may**' has been used in relation to arbitration. The use of the word '**may**' in relation to arbitration means that the parties would require a further consensus prior to reference to arbitration.



Arb.O.P.(Com.Div.)No.142 of 2025

WEB COPY

(b) He placed strong reliance on the judgment of the Hon'ble Apex Court in the case of **Eastern Coalfields Ltd.**, since this judgment has taken note of all the earlier judgments on the point.

10. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

11. The relevant portion in the offer letter dated 01.3.2015 has been extracted supra. It consists of two parts. The first part mandates that the parties will try to resolve the dispute by mutual talks. If the first part fails, the second part of the clause gives a discretion to the parties by using the words '**may be resolved**' to refer the dispute for arbitration.

12. It is relevant to take note of the judgment of the Hon'ble Apex Court in **Wellington Associates Ltd.**, wherein the relevant clauses in the agreement were extracted, which read as hereunder :

"9. Before referring to the said sections, I shall refer to the relevant clauses 4 and 5 in the two agreements dated 15.8.1995. They read as



WEB COPY



Arb.O.P.(Com.Div.)No.142 of 2025

follows:

'4. It is hereby agreed that, if any dispute arises in connection with these presents, only courts in Bombay would have jurisdiction to try and determine the suit and the parties hereto submit themselves to the exclusive jurisdiction of the courts in Bombay.

5. It is also agreed by and between the parties that any dispute or differences arising in connection with these presents may be referred to arbitration in pursuance of the Arbitration Act, 1940, by each party appointing one arbitrator and the arbitrators so appointed selecting an umpire. The venue of arbitration shall be at Bombay'."

13. In the decision ***in Wellington Associates Ltd.,*** the above two clauses were interpreted by the Hon'ble Apex Court from paragraphs 21 to 25 of the judgment. Ultimately, it was held that Clause 5 of the agreement read with Clause 4 led to the conclusion that Clause 5 was not a firm or mandatory arbitration clause and that it postulated a fresh agreement between the parties that they would have to go to arbitration.



WEB COPY

14. In the next decision of the Hon'ble Supreme Court in **Jagdish Chander**, the relevant clause in the agreement was extracted at paragraph 2, which reads as hereunder :

"2.

'(16) If during the continuance of the partnership or at any time afterwards any dispute touching the partnership arises between the partners, the same shall be mutually decided by the partners or shall be referred for arbitration if the parties so determine'."

15. In the decision in **Jagdish Chander**, while considering the above clause, the Hon'ble Apex Court, at paragraph 9, held as follows :

"9. Para 16 of the partnership deed provides that if there is any dispute touching the partnership arising between the partners, the same shall be mutually decided by the parties or shall be referred to arbitration if the parties so determine. If the clause had merely said that in the event of disputes arising between the parties, they 'shall be referred to arbitration', it would have been an arbitration agreement. But the use of the words 'shall be referred for arbitration if the parties so determine' completely changes the complexion of the provision. The expression 'determine' indicates that the parties are required to reach a decision by



WEB COPY



Arb.O.P.(Com.Div.)No.142 of 2025

application of mind. Therefore, when clause 16 uses the words 'the dispute shall be referred for arbitration if the parties so determine', it means that it is not an arbitration agreement but a provision which enables arbitration only if the parties mutually decide after due consideration as to whether the disputes should be referred to arbitration or not. In effect, the clause requires the consent of parties before the disputes can be referred to arbitration. The main attribute of an arbitration agreement, namely, consensus ad idem to refer the disputes to arbitration is missing in clause 16 relating to settlement of disputes. Therefore it is not an arbitration agreement, as defined under Section 7 of the Act. In the absence of an arbitration agreement, the question of exercising power under Section 11 of the Act to appoint an Arbitrator does not arise."

16. It must be kept in mind the crucial words that were taken into consideration by the Hon'ble Apex Court in the decision in **Jagdish Chander** were '**if the parties so determine**'. In view of the same, the Hon'ble Apex Court came to the conclusion that there were no consensus *ad idem* to refer the disputes to arbitration.



WEB COPY

17. In the decision in ***Eastern Coalfields Ltd.,*** the Hon'ble Apex Court took into consideration two earlier judgments. The relevant clause in the agreement was extracted at paragraph 3 of the judgment, which reads as hereunder :

"3. The appellant and the respondent entered into a contract relating to transportation/handling of goods. Disputes arose between the parties during the subsistence of the contract. Clause 13 of the General Terms and Conditions, appended to the e-tender notice, which forms part of the contract and relied upon by the appellant as an arbitration agreement, is the subject matter of interpretation. The same is extracted below:

'13. SETTLEMENT OF DISPUTES

It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the company level.

The contractor should make request in writing to the Engineer-in-charge for settlement of such disputes/claims within 30 (thirty) days of arising of the cause of dispute/claim failing which no disputes/claims of the contractor shall be entertained by the company.



WEB COPY



Arb.O.P.(Com.Div.)No.142 of 2025

Effort shall be made to resolve the dispute in two stages.

In first stage dispute shall be referred to Area CGM, GM. If difference still persist the dispute shall be referred to a committee constituted by the owner. The Committee shall have one member of the rank of Director of the company who shall be chairman of the company.

If differences still persist, the settlement of the dispute shall be resolved in the following manner:

In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/Port Trusts inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No.4(1)/2013-DPE (GM)/FTS-1835 dated 22.05.2018.

In case of parties other than Govt. Agencies, the redressal of the dispute may be sought through Arbitration and Conciliation Act, 1996 as amended by Amendment Act of 2015'."



WEB COPY

18. In the decision in ***Eastern Coalfields Ltd.,*** the Hon'ble Apex Court, at paragraphs 30 and 31, held thus :

"30. The argument of the learned counsel for the appellant is that clause 13 provides option to the parties, which include any of one of the parties, to seek dispute resolution through arbitration and, therefore, it is nothing but an arbitration clause. According to him, use of the word 'may' in clause 13 does not provide choice to the parties to agree, or not to agree, for arbitration, rather it is a choice given to either of the parties to seek a settlement through arbitration and, therefore, when one party exercises the option, the other party cannot resile from the agreement. In that sense, according to him, clause 13 is an arbitration agreement.

31. We do not agree with the aforesaid submission because clause 13 does not bind parties to use arbitration for settlement of the disputes. Use of the words 'may be sought', imply that there is no subsisting agreement between parties that they, or any one of them, would have to seek settlement of dispute(s) through arbitration. It is just an enabling clause whereunder, if parties agree, they could resolve their dispute(s) through arbitration. In our view, the phraseology of clause 13 is not indicative of a



WEB COPY

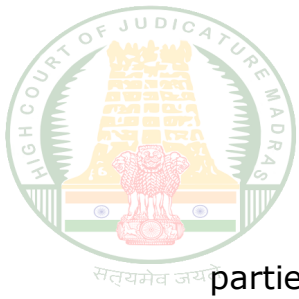


Arb.O.P.(Com.Div.)No.142 of 2025

binding agreement that any of the parties on its own could seek redressal of inter se dispute(s) through arbitration. We are, therefore, of the considered view that the High Court was justified in holding that clause 13 does not constitute an arbitration agreement."

19. The Hon'ble Apex Court, in the decision in **Eastern Coalfields Ltd.**, by taking note of the words '**may be sought**', came to the conclusion that there was no subsisting agreement between the parties, that it was only an enabling clause, whereunder, if the parties agreed, they could resolve their dispute through arbitration and that the phraseology of Clause 13 was not indicative of a binding agreement that any of the parties on its own could seek redressal of the inter-se disputes through arbitration.

20. In the case in hand, there is a mandatory tone in so far as trying to resolve the dispute by mutual talks is concerned. However, when it fails, the relevant clause talks about resolving the dispute through arbitration at Chennai. The terminology used is '**may be resolved**'. This only brings out the fact that in so far as referring the dispute to arbitration is concerned, there was an option given to the



Arb.O.P.(Com.Div.)No.142 of 2025

WEB COPY

parties and such option will translate itself into a binding agreement only if both the parties consent for the appointment of an arbitrator to resolve the disputes. Had the parties consciously decided to resolve the dispute only through arbitration, an appropriate word, which mandates such reference to arbitration, would have been used in the offer letter. Since the same has not been done, this Court holds that the offer letter does not provide for a firm or mandatory arbitration clause and that it merely provided an option to be exercised by the parties. If both parties agree upon this option, the said clause gets a mandatory character.

21. In the light of the above discussions, this Court holds that the relevant clause in the offer letter dated 01.3.2015 does not satisfy the requirement under Section 7 of the Act. Consequently, this Court cannot act upon this offer letter for appointment of an arbitrator.

22. In the result, the above original petition is dismissed. But, liberty is granted to the petitioner to work out his remedy before the competent court in a manner known to law.

22.9.2025



WEB COPY



Arb.O.P.(Com.Div.)No.142 of 2025

N.ANAND VENKATESH,J

RS

Index : Yes
Neutral Citation : Yes

Arb.O.P.(Com.Div.) No.142 of 2025

22.9.2025