

**ARB-416-2025 (O&M)****-1-**

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH***********ARB-416-2025 (O&M)
Date of Decision: 14.11.2025**

Sirion Labs Private Limited

.... Petitioner

Versus

Vedanta Limited (Cairn Oil & Gas Division)

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Prabal Mehrotra, Advocate and
Mr. Vinay Kumar Pandey, Advocate
for the petitioner.

Mr. Karan Mehra, Advocate and
Mr. Jagdeep Singh, Advocate,
for the respondent.

**********JASGURPREET SINGH PURI, J. (ORAL)****CM-21884-CII-2025**

For the reasons mentioned in the application, the same is allowed and the documents vide Annexures P-12 to P-21 are taken on record, subject to all just exceptions.

Main Case

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') praying for appointment of an Arbitrator on behalf of the respondent to adjudicate upon the disputes between the parties as the respondent has forfeited its right to nominate an Arbitrator.

2. Learned counsel for the petitioner submitted that an Agreement was executed between the petitioner and the respondent vide Annexure P-1

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for providing software as a service by the petitioner to the respondent which was in the nature of 'Master Software and Support Agreement'. This agreement was signed by both the parties, regarding which, there is no dispute. He further submitted that in the aforesaid Agreement, there is a valid Arbitration Clause at Para XVI(c), which provides that in case any dispute arises out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in India in accordance with the arbitration rules of the Act. Thereafter, it was also provided that an Arbitral Tribunal shall be constituted consisting of three Arbitrators, out of which, one will be nominated by each party and thereafter, the presiding Arbitrator will be selected by the nominated Arbitrators.

3. Learned counsel further submitted that after sometime when the Contract commenced, a dispute arose between the parties and because of that dispute, the petitioner invoked the aforesaid Arbitration Clause by way of a notice dated 16.04.2025 (Annexure P-10) whereby the petitioner nominated one Arbitrator on its behalf in pursuance of the aforesaid Arbitration Clause. However, a reply to the said notice was received by the petitioner from the respondent vide Annexure P-11 whereby the respondent disputed the appointment of the Arbitral Tribunal in view of the fact that the aforesaid Arbitration Clause was replaced and substituted by a subsequent Agreement whereby it was so provided that any difference of opinion between the Vendor and the Company in respect of matters arising out of this Contract shall be resolved through good faith negotiation. Learned counsel submitted that the aforesaid stand taken in the reply filed by the respondent was incorrect in view of the fact that there was no substitution or



replacement of the original Contract (Annexure P-1).

4. To substantiate his arguments, learned counsel has referred to Annexure P-12 dated 28.03.2022 and submitted that the original Contract (Annexure P-1) came into force from 15.03.2022 and after a few days, the respondent vide Annexure P-12 wrote an email to the petitioner on 28.03.2022 in which unilaterally it had fixed some Conditions of Rate Contract and although the Conditions of Rate Contract had already been annexed with Annexure P-1 which has been attached with the present petition but the respondent unilaterally communicated revised terms through email dated 28.03.2022. In the aforesaid Conditions of Rate Contract on which the respondent is now relying, a new Clause 13 was introduced wherein it was so provided that difference of opinion between the Vendor and the Company in respect of matters arising out of this Contract shall be resolved through good faith negotiation. He further submitted that the aforesaid Clause 13 on which the respondent is relying upon is not enforceable under the law in view of the fact that it was only a unilateral communication sent by the respondent to the petitioner after the original Contract was concluded. He also submitted that once a Contract comes into existence whereby the terms and conditions are binding upon the parties, no such unilateral change of the terms and conditions could be made applicable.

5. To further substantiate his arguments, he submitted that rather the petitioner also wrote a letter by way of an email to the respondent which is also attached with the present petition as Annexure P-15 whereby on 16.05.2022, the petitioner wrote to the respondent by stating that the main Contract was signed for a period of five years and the order form which was sent by the respondent is unacceptable to the petitioner and requested the

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respondent to remove that clause and re-send for signatures. In other email, which was sent by the petitioner to the respondent it was stated that the petitioner has already highlighted the Terms and Conditions mentioned in the attached document and this Clause was not there in the Master Software and Support Agreement (Annexure P-1). He further submitted that the TFC are the new terms and conditions (Annexure P-12) and the MSSA was the initial Contract (Annexure P-1). He submitted that in this way the petitioner objected to the aforesaid new clause being inserted unilaterally by the respondent. He further referred to another email of next date i.e. 17.05.2022 whereby it was clearly stated by the petitioner to the respondent that all the terms and conditions are as per the Master Software and Support Agreement only and the respondent can ignore the terms and conditions which are mentioned in the attached Contract i.e. Annexure P-12. He submitted that in this way the petitioner denied the execution of a new Contract and did not accept the terms and conditions which were so provided in the same which was sent by the respondent to the petitioner and there could not have been any change of terms and conditions unilaterally and this was clear from the email which the petitioner had sent as aforesaid and therefore, the respondent cannot take benefit of the aforesaid Annexure P-12 and the aforesaid terms and conditions so relied upon by the respondents deserve to be ignored and only Annexure P-1 i.e. the original Contract which was signed by both the parties being the original Contract is binding upon both the parties which contains the Arbitration Clause and the respondent is bound by the aforesaid arbitration Clause and submitted that in view of the aforesaid submission, an Arbitrator on behalf of the respondent may be appointed by this Court so that two such nominated Arbitrators may appoint



the presiding Arbitrator so as to constitute an Arbitral Tribunal as per the Arbitral Clause.

6. On the other hand, learned counsel for the respondent has submitted that the respondent has two objections to the present petition. The first is that in view of Annexure P-12 whereby fresh terms and conditions were settled between the parties wherein there is no arbitration clause and now no arbitration clause exists and in case of any difference of opinion, the matter is to be resolved through good faith negotiations only. To substantiate his argument, he submitted that the petitioner has accepted the aforesaid changed terms and conditions of the Contract in view of the fact that when the respondent raised invoices, the same were accepted by the petitioner and in this regard he referred to Annexure P-14 whereby invoice raised by the respondent by stating that it is an Amendment Order 1, the petitioner responded to the same and wrote that the same is pursuant to the terms and conditions of the software as Amendment Order 1 and in this way same expression was used by the petitioner vide Annexure P-2 which is a document issued by the petitioner themselves and similarly such invoices were raised by the respondent in terms of the fresh terms and conditions as Annexure P-12 and the same was responded by the petitioner by so referring to the aforesaid Amendment Order 1 and therefore, the petitioner is now estopped from raising a plea that there was no change of terms and conditions of the Contract. He submitted that in this way the dispute cannot be referred to an Arbitral Tribunal for arbitration because there is no arbitration Clause in existence after the aforesaid amendment was made whereby the dispute is not to be referred to an Arbitral Tribunal but is to be resolved through good faith negotiation only.



7. Learned counsel further submitted that so far as the second objection is concerned, the same pertains to the territorial jurisdiction of this Court. In this regard, he submitted that in the aforesaid Annexure P-12 which provided for the changed terms and conditions, it was so mentioned in the aforesaid Clause 13 itself that the parties accept that only the Courts in Delhi will have jurisdiction for deciding any dispute arising amongst the parties and since both the parties have accepted that the dispute is to be adjudicated by the Courts of Delhi, then this Court would not have any jurisdiction to appoint any Arbitrator under Section 11 of the Arbitration Act and only the Court at Delhi can appoint such an Arbitrator in case necessity so arises and therefore, on this ground as well, the present petition is liable to be dismissed.

8. I have heard the learned counsels for the parties.

9. Before proceeding further, the relevant Clauses are required to be reproduced. The Arbitration Clause i.e. Clause XVI(c) which is so incorporated in Master Software and Support Agreement (Annexure P-1) on which learned counsel for the petitioner is relying upon and the same is stated to be a part of the basic contract signed by both the parties, is reproduced as under:-

*“c. **Arbitration.** Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in India in accordance with the arbitration rules of the Arbitration and Conciliation Act, 1996 for the time being in force, which rules are deemed to be incorporated by reference in this Section. The tribunal shall consist of a forum of three (3) arbitrators with one arbitrator nominated by*



each party and the presiding arbitrator selected by the nominated arbitrators. The language of the arbitration shall be English. The award made in pursuance thereof shall be final and binding on the parties. The right to refer any dispute to arbitration pursuant to this Section shall survive the expiry or termination of the Agreement.”

10. The aforesaid Agreement undisputedly came into force from 15.03.2022 which reflects from the 1st Paragraph of the Master Software and Support Agreement (Annexure P-1) and along with the aforesaid Annexure P-1 there was a Schedule 1, Proforma Order Schedule, which provided for various rates.

11. Annexure P-12 is a document in the nature of an email which was written by the respondent to the petitioner in which a new Clause was inserted in the terms and conditions. Clause 13 of Annexure P-12, which is relied upon by the learned counsel for the respondent is reproduced as under:-

“13. Settlement of Disputes

Any difference of opinion between the Vendor and Company in respect of matters arising out of this Contract shall be resolved through good faith negotiation.

The parties accept that only the court in Delhi will have the jurisdiction for deciding any dispute arising among the Parties.”

12. A perusal of the emails which were attached vide Annexure P-15 dated 16.05.2022 and 17.05.2022 clearly shows that the petitioner did not accept any such change of the terms and conditions at all. Three such communications have been shown to this Court which are annexed as Annexure P-15 whereby it is clearly stated by the petitioner that the terms and conditions of the original Contract would be applicable and not the new



terms and conditions. In this way, it is clear that so far as Annexure P-12 is concerned, it is not a document which is signed by both the parties to be in super-session or replacement of the earlier Contract, but it is in the nature of a letter written by the respondent to the petitioner which is thereupon denied by the petitioner by way of the aforesaid email.

13. The argument raised by learned counsel for the respondent pertaining to the first objection that after commencement of the Contract, the respondent had raised various invoices in which they have specifically mentioned that in pursuant to Amendment Order 1, regarding which, the petitioner has also responded to the same by so mentioning in its response that it is pursuant to the terms and conditions of the Software as Amendment Order 1 which is reflected from Annexure P-2 and in this way the petitioner has accepted the Amendment Order 1 and therefore, now the petitioner is estopped from doing so. This argument raised by learned counsel for the respondent is not acceptable and it appears to be misconceived. At the time when the reference Court under Section 11 of the Act is to consider whether an Arbitrator is to be appointed under Section 11 of the Act or not, it is a settled law that this Court only has to see *prima facie* existence of an Arbitration Clause and Reference Court would not conduct a mini trial with regard to anything on merit. Since the learned counsel for the respondent has taken up a plea that there was no arbitration clause and has relied upon the aforesaid Annexure P-12 whereby both the parties have responded to each other with regard to the Amendment Order 1, the same therefore came into force and this argument is not sustainable in view of the fact that this Court is only to see *prima facie* existence of an Arbitration Agreement between the parties by way of a written agreement and signed by both the parties. The



aforesaid so called substituted terms and conditions are by way of an email written by the respondent to the petitioner which are specifically denied by the petitioner as so noted above. Therefore, this Court is of the considered view that the mere fact that when the petitioner has responded to the invoice by so stating that the same is pursuant to Amendment Order 1 would not mean that the petitioner has accepted the changed terms and conditions which were unilaterally made by the respondent. Therefore, this objection raised by the learned counsel for the respondent is rejected.

14. So far as the second objection raised by the learned counsel for the respondent with regard to the territorial jurisdiction of this Court is concerned, a perusal of Annexure P-1 which is an Agreement containing the arbitration clause would show that there is no seat or venue provided. On the other hand, both the petitioner and the respondent in their memo of parties are stated to be placed in Gurugram which is within the territorial jurisdiction of this Court. So far as the argument raised by learned counsel for the respondent that in the aforesaid Annexure P-12, whereby the new terms and conditions were mentioned it is so mentioned that only the Courts in Delhi will have the jurisdiction for deciding any dispute arising amongst the parties is concerned, the same would not be sustainable in view of the fact that the aforesaid document was only a unilateral communication via email which was so sent by the respondent to the petitioner by changing the terms and conditions which was so specifically denied by the petitioner. There is nothing on the record to show that a fresh agreement has been executed between the parties and signed by both the parties incorporating such kind of clause whereby seat of arbitration has been fixed to be at some other place. Therefore, this argument pertaining to the territorial jurisdiction

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is rejected.

15. In view of the aforesaid facts and circumstances, the present petition is allowed. Mr. Justice Rakesh Kumar Jain, a former Judge of this Court, resident of House No.133, Sector 35-A, Chandigarh, Mobile No.9780008134, Email ID. j.rkjain01@gmail.com, is nominated by this Court as second Arbitrator, subject to compliance of statutory provisions including Section 12 of the Act. The Arbitrator nominated by the petitioner i.e. Mr. Justice Akhil Kureshi (Retd.) and the second Arbitrator appointed by this Court i.e. Mr. Justice Rakesh Kumar Jain (Retd.) will nominate/select the presiding Arbitrator thereby constituting an Arbitral Tribunal as per the arbitration clause.

16. Parties are directed to appear before the aforesaid learned Arbitral Tribunal on date, time and place to be fixed and communicated by the learned Arbitral Tribunal at its convenience.

17. Fee shall be paid to the learned Arbitral Tribunal in accordance with the Fourth Schedule of the Arbitration Act, as amended.

18. Learned Arbitral Tribunal is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.

19. A request letter alongwith a copy of the order be sent to Mr. Justice Rakesh Kumar Jain, a former Judge of this Court.

14.11.2025*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |