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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-519-2025

Date of decision: 23.12.2025

SEC BUILDTECH PRIVATE LIMITED

...Applicant(s)

VERSUS

NKC PROJECTS PRIVATE LIMITED

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

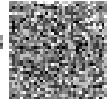
Present:- Mr. Piyush Bansal, Advocate
for the applicant.

Mr. Karanvir Hooda, Advocate
for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

1. The present application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeking appointment of an independent Arbitrator to adjudicate the disputes and differences which have arisen between the parties.

2. Learned counsel for the applicant submitted that there exists a work order for construction of earthwork between the parties vide Annexure P-3. He referred to Clause 16 of the said work order, which pertains to settlement of disputes and submitted that it contains an arbitration clause. He further submitted that a dispute arose between the parties and thereafter, a notice invoking the arbitration clause was issued by the applicant to the respondent through registered post vide Annexure P-18 dated 27.04.2024.



3. On the other hand, learned counsel for the respondent submitted that the present application is not maintainable in view of the fact that no arbitration clause exists. In this regard, he referred to the aforesaid Clause 16, which provides that in case of any dispute or differences during the execution of the work, the same shall be settled/reconciled in a cordial manner and the decision of the Managing Director of NKCPPL as Sole Arbitrator shall be final and binding on the applicant. He further submitted that the mere mentioning of the expression 'Sole Arbitrator' would not convey the intention of the parties to settle the dispute through arbitration process because the intention of the parties is clear from the aforesaid clause which conveys that the dispute is to be settled by way of settlement/reconciliation by the Managing Director.

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

5. The aforesaid Clause 16 is reproduced as under:-

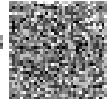
16. SETTLEMENT OF DISPUTES

“Any kind of dispute(s) or differences during the execution of work if arises, shall be settled/reconciled in a cordial manner and the decision of Managing Director of NKCPPL as sole arbitrator shall be final and binding on you.

16. JURISDICTION

Any dispute arising out of this Work Order shall be resolved in Gurgaon court only.”

6. The issue which has arisen in the present case is as to whether there exists a *prima facie* arbitration clause or not. A perusal of the aforesaid would show that the intention of the parties was not to refer the matter to the arbitration but rather to have it settled or reconciled in a cordial manner by the



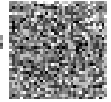
Managing Director, whose decision shall be final. The mere mentioning of the expression 'Sole Arbitrator' would not convey the intention of the parties to arbitrate the matter. Reference in this regard may be made to a judgment passed by this Court in ARB-260-2025, titled as **All India Society for Electronics and Computer Technology (AISECT) versus Haryana State Rural Livelihoods Mission (HSRLM) and Others**, decided on 04.12.2025, wherein it was held that for a clause to qualify as an arbitration agreement, it is not sufficient to merely use the word 'arbitration' in the heading but a substantive part of the clause must demonstrate a clear and mandatory intention to submit disputes to arbitration and to be bound by the decision of the Arbitral Tribunal. Relevant paragraphs of the aforesaid judgment passed by this Court are reproduced as under:-

*"7. Hon'ble Supreme Court in **K.K. Modi v. K.N. Modi (1998) 3 SCC 573** laid down the relevant factors to determine the existence of an arbitration agreement. The relevant portion of the said judgment is reproduced as under:-*

17. Among the attributes which must be present for an agreement to be considered as an arbitration agreement are:

(1) The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement;

(2) that the jurisdiction of the tribunal to decide the rights of parties must derive either from the consent of the parties or from an order of the court or from a statute, the terms of which make it clear that the process is to be an arbitration;



(3) the agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal'

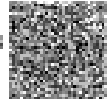
(4) that the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides

(5) that the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly;

(6) the agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal."

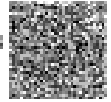
8. Thereafter Hon'ble Supreme Court in **Jagdish Chander v. Ramesh Chander & Ors., (2007) 5 SCC 719**, had an occasion to deal with this very position and the relevant portion is reproduced as under:

"8. This Court had occasion to refer to the attributes or essential elements of an arbitration agreement in K.K. Modi v. K.N. Modi [(1998) 3 SCC 573] , Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd. [(1999) 2 SCC 166] and Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd. [(2003) 7 SCC 418] In State of Orissa v. Damodar Das [(1996) 2 SCC 216] this Court held that a clause in a contract can be construed as an "arbitration agreement" only if an agreement to refer disputes or differences to arbitration is expressly or impliedly spelt out from the clause. We may at this juncture set out the well-settled principles in regard to what constitutes an arbitration agreement:



(i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and a willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.

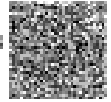
(ii) Even if the words “arbitration” and “Arbitral Tribunal (or arbitrator)” are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. They are: (a) The agreement should be in writing. (b) The parties should have agreed to refer any disputes (present or future) between them to the decision of a private tribunal. (c) The private tribunal should be empowered to adjudicate upon the disputes in an impartial manner, giving due opportunity to the parties to put forth their case before it. (d) The parties should have agreed that the decision of the private



tribunal in respect of the disputes will be binding on them.

(iii) Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to arbitration, it is an arbitration agreement. Where there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement to make it an arbitration agreement. But where the clause relating to settlement of disputes, contains words which specifically exclude any of the attributes of an arbitration agreement or contains anything that detracts from an arbitration agreement, it will not be an arbitration agreement. For example, where an agreement requires or permits an authority to decide a claim or dispute without hearing, or requires the authority to act in the interests of only one of the parties, or provides that the decision of the authority will not be final and binding on the parties, or that if either party is not satisfied with the decision of the authority, he may file a civil suit seeking relief, it cannot be termed as an arbitration agreement.

(iv) But mere use of the word “arbitration” or “arbitrator” in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as “parties can, if they so desire, refer their disputes to arbitration” or “in the event of any dispute, the parties may also agree to refer the same to arbitration” or “if any disputes arise between the

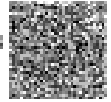


parties, they should consider settlement by arbitration” in a clause relating to settlement of disputes, indicate that the clause is not intended to be an arbitration agreement. Similarly, a clause which states that “if the parties so decide, the disputes shall be referred to arbitration” or “any disputes between parties, if they so agree, shall be referred to arbitration” is not an arbitration agreement. Such clauses merely indicate a desire or hope to have the disputes settled by arbitration, or a tentative arrangement to explore arbitration as a mode of settlement if and when a dispute arises. Such clauses require the parties to arrive at a further agreement to go to arbitration, as and when the disputes arise. Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future”.

*9. Furthermore, Hon’ble Supreme Court in **Mahanadi Coalfields Ltd. and Anr. v. M/s IVRCL AMR Joint Venture, (2022) 20 SCC 636** observed that the clause of that case had the title of “**Settlement of Disputes/Arbitration,**” but the substantive part of the provision made it abundantly clear that no arbitration agreement between the parties was in existence and therefore, the matter could not have been referred to arbitration. The relevant clause therein reads as under:-*

15. Settlement of Disputes/Arbitration:

15.1. It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the

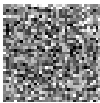


contractor and the department, effort shall be made first to settle the disputes at the company level. The contractor should make request in writing to the Engineer-in-Charge for settlement of such disputes/claims within 30 (thirty) days of arising of the case of dispute/claim failing which no disputes/claims of the contractor shall be entertained by the company.

15.2. If differences still persist, the settlement of the dispute with government agencies shall be dealt with as per the Guidelines issued by the Ministry of Finance, Government of India in this regard. In case of parties other than government agencies, the redressal of the disputes may be sought in the court of law.”

Hon’ble Supreme Court in that case held that the mere use of the word “Arbitration” in the title of the clause without any corresponding substantive part relating to arbitration could not be considered a valid arbitration agreement under Section 7 of the A&C Act.

*10. Hon’ble Supreme Court in a recent judgment in **M/s Alchemist Hospitals Ltd. V. M/s ICT Health Technology Services India Pvt. Ltd. (SLP (Civil) NO.19647-2024)** decided on 06.11.2025, while referring to all the aforesaid judgments, held that mere use of word arbitration is not sufficient to treat the clause as an arbitration agreement when the corresponding mandatory intent to refer the disputes to arbitration and the consequent intent to be bound by the decision of the arbitral tribunal is missing.”*



7. In view of the above, this Court is of the considered view that in the absence of a *prima facie* arbitration clause, no Arbitrator can be appointed.
8. Consequently, the present arbitration case is dismissed.

23.12.2025
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No