

ARB-652-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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ARB-652-2024 (O&M)

Date of Decision: 04.08.2025

M/s Friends Paper Mills

...Applicant

Versus

HDFC Ergo General Insurance

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Jaskaran Jeet Singh Sibia, Advocate for the applicant

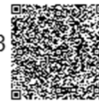
Mr. Sachin Ohri, Advocate for the respondent

JAGMOHAN BANSAL, J. (Oral)

1. Through instant application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short '**1996 Act**'), the applicant is seeking appointment of an Arbitrator.

2. Learned counsel for the respondent submits that there is no arbitration agreement between the parties, thus, matter cannot be referred to Arbitral Tribunal. The Arbitration Agreement is limited to dispute *qua* quantum of compensation to be paid. In case claim is repudiated, the matter cannot be referred to Arbitral Tribunal.

3. Learned counsel for the applicant submits that Delhi High Court in *M/s Inox World Industries Private Limited v. IFFCO Tokio General Insurance Company Limited*, 2025 SCC OnLine Del 2873 while adverting to similar clause has held that the matter needs to be referred to



Arbitral Tribunal. It is the Arbitral Tribunal which has to adjudicate all the disputed questions.

4. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

5. The parties have entered into agreement of Insurance. Clause I (4) of the agreement which is bone of contention is reproduced as below: -

“4. *Arbitration*

If any dispute or difference arises between You and Us regarding the amount of claim to be paid under this policy (liability having been admitted by Us), such difference shall independently of all other questions, be referred to the decision of a sole arbitrator to be appointed in writing by You and Us or if You and We cannot agree upon a single arbitrator within 30 days of either of Us opting for arbitration, the same shall be referred to a panel of three arbitrators comprising of two arbitrators, one to be appointed by each of Us, to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.”

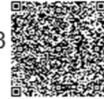
6. From the perusal of aforesaid clause, it is evident that matter may be referred to the decision of a Sole Arbitrator if there is difference between the claimed and admitted amount. In case claim is repudiated, there is no covenant to refer the matter to Arbitral Tribunal.

7. A three-Judge Bench of Hon'ble Supreme Court in ***Oriental Insurance Company Limited v. M/s Narbheram Power and Steel Pvt. Ltd., 2018 (6) SCC 534***, while adverting to similar clause has held that the matter



cannot be referred to Arbitral Tribunal. The clause in question and clause considered by the Supreme Court are reproduced in juxtaposition.

<i>Present Case</i>	<i>Narbheram Power (supra)</i>
<i>“If any dispute or difference arises between You and Us regarding the amount of claim to be paid under this policy (liability having been admitted by Us), such difference shall independently of all other questions, be referred to the decision of a sole arbitrator to be appointed in writing by You and Us or if You and We cannot agree upon a single arbitrator within 30 days of either of Us opting for arbitration, the same shall be referred to a panel of three arbitrators comprising of two arbitrators, one to be appointed by each of Us, to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.”</i>	<i>“If any dispute or difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.</i> <i>It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore</i>



provided, if the company has disputed or not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator/arbitrators of the amount of the loss or damage shall be first obtained.”

8. Recently, Supreme Court in ***BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Limited, 2025 SCC OnLine SC 1471*** while dealing with a clause of agreement which provided that in case of dispute, the redressal of dispute may be sought through Arbitration and Conciliation Act, 1966 as amended by Amendment Act of 2015, has held that use of expression “*may be sought*” imply that there is no subsisting agreement between the parties that they, or any one of them, would have to seek settlement of dispute through Arbitration. The clause in dispute as well as findings of Supreme Court are reproduced as 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.

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”

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“28. Clause 13 in its first paragraph sets out intent to avoid litigation and advises the contractor to make effort to settle the dispute at the company level. Second paragraph sets out the procedure for raising the dispute/claim for settlement at the company level. It provides that the contractor should make request in writing to the Engineer-in-charge for settlement of disputes/claims within 30 days of arising of the cause of dispute/claim failing which it shall not be entertained by the company. Thereafter, clause 13 provides for a two-stage procedure for resolution of the dispute. In the



first stage, dispute is to be referred to Area CGM, GM. If difference persists, the dispute is to be referred to a committee constituted by the owner. If difference continues to persist, the second stage procedure becomes applicable. According to which, if the dispute or difference relates to the interpretation and application of the provisions of commercial contracts between Central Public Sector Enterprises CPSEs/Port Trusts inter se, or is between CPSEs and Government Departments/Organizations (excluding disputes concerning railways, income tax, Customs and 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. However, in case of parties other than Govt. Agencies, the redressal of the dispute may be sought through arbitration as per 1996 Act.

29. *The High Court opined that use of the words “may be sought through Arbitration...” indicate that at the stage of entering the contract, parties were not ad idem that inter se dispute shall be resolved through arbitration, therefore the said clause would not constitute an arbitration agreement.*

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 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.

32. As it is not the case of the appellant that parties at any later stage have agreed to refer the disputes to arbitration, in our view, the High Court was justified in rejecting the application seeking appointment of an arbitrator. Issue (ii) is decided in the aforesaid terms.”

9. The applicant is relying upon judgment of learned Single Judge of Delhi High Court. This Court is of the considered opinion that in view of afore-cited judgments of Supreme Court, the matter cannot be referred to decision of Sole Arbitrator when the respondent has repudiated the claim.

10. In the wake of above discussion and findings, this Court is of the considered opinion that present application deserves to be dismissed and accordingly dismissed.

11. Pending application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

04.08.2025
Mohit Kumar

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