

04.02.2026
Ct. No. 06
Item 09
Cp/Gb

C.O. 30 of 2025
With
CAN 1 of 2025

Uday Ranjan Paul
Vs.
Airplaza Retail Holdings Pvt. Ltd.

Mr. Aniruddha Chatterjee, Sr. Advocate
Mr. Debaki Nandan Maiti
Mr. Mihir Saha
Mr. Rittick Chowdhury
Ms. A. Santra
Mr. P. Lakhotia

.....for the petitioner.

Mr. Sayan Banerjee

.....for the opposite party.

1. The petitioner is the plaintiff in Other Suit No.17 of 2023. The petitioner is aggrieved by an order dated November 8, 2024, passed by the learned Civil Judge (Senior Division), 2nd Court, Sadar, Paschim Medinipur. By the order impugned, the learned court allowed an application under Section 8 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'the said Act') that was filed by the opposite party.
2. The opposite party contended before the learned court that all disputes which may arise between the parties out of the agreement for lease shall be referred to arbitration. The learned court was of the view that

the agreement between the parties contains an arbitration clause. Upon considering the decisions of the Hon'ble Apex Court as also the High Court on such issue, the court allowed the application, inter alia, holding that the dispute should be resolved by an arbitrator.

3. Although the court recorded that the court could not go into the validity of the clause, it appears from the objection filed by the plaintiff to the application under Section 8 of the said Act that, no challenge was thrown by the plaintiff, either to the existence or validity of the said agreement. The suit was filed for a declaration that the plaintiff was entitled to lease rent from the defendant in respect of the A Schedule property, for a decree of arrear monthly rent with GST in respect of B Schedule property and for other reliefs. The property is situated at Paschim Medinipur, West Bengal. The agreement for rent was entered into between the parties on July 20, 2018,. The said property was leased out for commercial purpose. The period of lease was effective from the rent commencement date and was to continue for a period of 15 years with a lock in period of 24 months.
4. Clause 2 of the lease agreement provided for advance rent. Clause 3 provided for increment of rent. Clause 4 provided for security deposit to be made by the

opposite party. Clause 5 provided for delivery of possession. Clause 7 dealt with the covenants to be followed by the lessee. Clause 8 dealt with the covenants to be followed by the lessor.

5. In the plaint, it was alleged that the lease rent from June 2022 to December, 2022 at the increased rate was not paid by the opposite party, although several notices were served.
6. Thus, it appears to this court that the suit was filed for enforcement of the essential terms and conditions of the agreement which deal with the rent, incremental rent and non-payment thereof. The opposite party filed the application, inter alia, stating that the suit should be dismissed. That the parties had agreed that all disputes and differences shall be decided by an arbitrator to be appointed by the lessee.
7. Mr. Chatterjee, learned senior advocate for the petitioner/lessor submits that the suit was maintainable. The arbitration clause was not a valid clause in the eye of law, as the same was vague. Once the courts of Medinipur had been given the exclusive jurisdiction to try all disputes and differences between the parties, the question of reference of the disputes to arbitration did not arise. An arbitration clause must be specific. Mr. Chatterjee also submits

that the learned court ought to have looked into the validity of the said clause and should not have mechanically allowed the application under Section 8 of the said Act.

8. Heard the parties. It is an admitted fact that the agreement for lease contains an arbitration clause which is quoted below:-

“19. All disputes, differences and questions of any nature which at any time arise between the Parties to this Deed or their respective representatives and assigns or any of them out of the construction of or concerning anything contained in or arising out of this Deed or as to the rights, duties or liabilities under it of the Parties to it respectively or their respective representatives shall be subject to the exclusive jurisdiction of the courts at Midnapore. The disputes shall be settled by the arbitrator to be appointed by the Lessee in accordance with the Indian Arbitration Act 1996. The venue of arbitration shall be at Gurugram, Haryana and the arbitration proceedings shall be conducted in English language. The applicable law shall be Indian law.”

9. The suit was filed for enforcement of certain terms and conditions of the said lease agreement. The arbitration clause provides that all disputes and differences or any questions of any nature which may arise from time to time between the parties to the said agreement or their representatives or assigns or any issue with regard to construction of or concerning anything contained in or arising out of the deed or the rights and liabilities and duties of the parties shall be subject to the exclusive jurisdiction of

the courts at Medinipur and the dispute shall be settled by an arbitrator to be appointed by the lessee. The venue of arbitration shall be Gurugram, Haryana

10. This court agrees with the submission of Mr. Chatterjee that under the law, a party cannot unilaterally appoint an arbitrator. Thus, the liberty retained by the lessee to appoint an arbitrator is not permissible in law. However, the same does not make the arbitration clause invalid, but it only makes the mechanism agreed to with regard to the mode of appointment of the arbitrator, impermissible in law.
11. The course open to the party in such a situation is to approach the court under Section 11(6) of the said Act for appointment of the arbitrator, unless they agree on the sole arbitrator.
12. There is no allegation that the document containing the arbitration clause is either forged or fabricated. Rather the plaintiffs seek to enforce the covenants in the deed itself. The objection is that the above clause is not a valid arbitration clause, in the absence of a definite intention of the parties to refer the dispute to arbitration.
13. This court finds that the courts of Medinipur have been conferred exclusive jurisdiction. There is an ouster of jurisdiction of all courts other than Medinipur Court. The next sentence after the

jurisdiction clause clearly indicates meeting of the minds of the parties for reference of disputes to arbitration. The expression “shall be settled by the arbitrator” to be appointed by the lessee in accordance with the Arbitration and Conciliation Act, 1996, is relevant. The parties intended to refer their dispute to arbitration. The next sentence mentions the agreed venue for the arbitral proceeding as Gurugram, Haryana.

14. In the matter of ***Jagdish Chander vs Ramesh Chander & Ors*** reported in ***AIR 2007 SC 107***, the ***Hon’ble Apex Court held as follows:-***

“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 vs. U.P. Small Industries Corporation Ltd.* [1999 (2) SCC 166] and *Bihar State Mineral Development Corporation 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 an 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.”

15. In the matter of ***Solaris Chem Tech Industries Ltd***

Vs Assistant Executive Engineer Karnataka

Urban Water Supply and Drainage Board & Anr.

reported in **2023 INSC 916**, the Hon’ble Apex Court

held as follows:-

“**18.** Sub-section (1) of Section 7 indicates that an arbitration agreement is an agreement by 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”. It is well settled that in determining whether there is an arbitration agreement, the terms of the contract between the parties must be read as a whole. The 1996 Act does not prescribe a certain form of an arbitration agreement. The use or the absence of the word ‘arbitration’ is not conclusive and the intention of the parties to resolve the disputes through arbitration should be clear from the terms of the clause.

16. In this case, the agreement to refer the dispute to arbitration is clear. It is well-settled that the arbitration clause should be read as a whole and given a purposive construction. The overall jurisdiction governing clause does not render the arbitration clause to be either invalid or vague. The exclusive jurisdiction, the agreement to refer disputes to an arbitrator and the venue of such arbitration, have been clubbed together in one clause. I hold that this is a valid arbitration clause.

17. Under such circumstances, the revisional application fails and is dismissed. With the dismissal of the revisional application, the application being CAN 1 of 2025 is also dismissed. All issues are left open and the parties are at liberty to take steps in accordance with law.

18. There shall be no order as to costs.

19. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)