

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Original Civil Jurisdiction

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

RVWO/23/2024
WITH
AP/818/2023

SRI KRISHNENDU MONDAL
VS
SWAPAN DEY

For the petitioner : Mr. Dibyendu Chatterjee, Advocate
Ms. Rashmi Ghosh, Advocate
Ms. Parna Mukherjee, Advocate
Mr. Rahul Deb Goenka, Advocate
Mr. S. Chatterjee, Advocate

For the respondent : Mr. Abhishek Kabir, Advocate

Heard on : 1 April, 2026

Judgment on : 1 April, 2026

Ravi Krishan Kapur, J.:

1. This is an application seeking review of an order dated 19 April 2024 passed in an application under section 11 (6) of the Arbitration and Conciliation Act, 1996. For convenience, the order dated 19 April, 2024 is set out below:

"The Court: It is fairly submitted by the petitioner that the instant application is misconceived and there is no valid nor subsisting arbitration clause by and between the parties. The respondent is represented and submits that there has been gross fraud perpetrated by the petitioner and that on the basis of an invalid and inoperative arbitration clause, proceedings have also been filed under Section 9 of the Arbitration and Conciliation Act, 1996 before the District Judge at Alipore. For convenience, clause 17 of the agreement is set out hereinbelow;

"17. That in event of any problem that the both party can appoint any Arbitrator with the consent of other party."

A perusal of the said clause would ex facie demonstrate that the same is unintelligible and meaningless. There is lack of mutuality and no consensus ad idem. In fact, there is no valid arbitration clause between the parties. In such circumstances, as prayed for by the petitioner, AP/818/2023 stands dismissed on the ground of maintainability.

Needless to mention, the incidental proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 are also misconceived and not maintainable. Both parties are at liberty to take appropriate steps, before the learned District Judge at Alipore in Misc. Case no. 15/2023, in accordance with law.”

2. The present application for review has been filed on the ground that though the arbitration clause is cryptic but the intention is clear from the word “Arbitrator” that there was *consensus* to refer the disputes to arbitration. In this background, the applicants seeks review on the ground that there is an error apparent from the records and the application is liable to be allowed. In support of such contentions, the applicant relies on *Jagdish Chander vs. Ramesh Chander & Ors.* (2007) 5 SCC 719, *Powertech World Wide Ltd. Vs. Delvin International General Trading LLC* (2012) 1 SCC 361 and *Visa International Ltd. Vs. Continental Resources (USA) Ltd.* (2009) 2 SCC 55.
3. On behalf of the respondent, it is submitted that there is no scope for review of an order passed under section 11 of the Act and the only remedy of the petitioner is to file an appeal. The jurisdiction of review cannot be invoked to reopen and reconsider a determination made under section 11 of the Act. In any event, in view of the recorded concession in the order dated 19 April, 2024, the applicant is estopped from seeking review of the order. There is no binding arbitration agreement between the parties. The word “Arbitrator” in the clause does not automatically make the same binding. In support

of such contentions, the respondent relies on *Jagdish Chander vs. Ramesh Chander & Ors.* (Supra), *BGM and M-Rpl-Jmct (JV) vs. Easter Coalfields Ltd.* 2025 SCC OnLine SC 1471, *(BVEPL Bhartia (JV) vs. State of West Bengal & Ors. Judgment dated 22.05.2025 passed by a Co-ordinate Bench in A.P.-Com 991 of 2024, Calcutta High Court and South Delhi Municipal Corporation of Delhi vs. SMS Ltd. (2026) 1 SCC 545 and Vimalleshwar Nagappa Shet v. Noor Ahmed Shariff, (2011) 12 SCC 658.*

4. At the outset, the order dated 9 April 2024 was passed at the invitation of the petitioner. The concession made by the Advocates appearing for the petitioner is expressly recorded in the opening sentence of the order. There is no challenge to the said recording in this application. A mere change of Advocates does not give a ground to review the recording in the order. There is no mistake of the Court which warrants interference. [*Vimleshwar Nagappa Shet vs Noor Ahmad Sheriff and Ors. (Supra)*].
5. It is now well-settled that the Arbitration and Conciliation Act, 1996 is a self-contained Code and the scope for judicial intervention is limited in cases where an order is passed under section 11 of the Act. The only remedy available to a party is to approach the Hon'ble Supreme Court challenging the said order or raise the question of jurisdiction before the Arbitral Tribunal. It has been repeatedly reiterated that attempts to re-agitate issues through the back-door of what the statute has expressly prohibited is impermissible. Any attempt to review an order passed under Section 11(6) of the Act goes against the

grain of the Act and undermines the principle of minimal judicial interference. [*Hindustan Construction Company Ltd. Vs. Bihar Rajya Pul Nirman Nigam Ltd. (Supra)*, *BSNL vs. Nortel Networks (India) (P) Ltd. (Supra)*].

6. In any event, apart from the question of maintainability even on merits there is no question for re-opening the order dated 19 April 2024. The use of the expression ‘can’ in the arbitration clause does not indicate finality nor conclusiveness. An arbitration agreement must reflect a definitive and mutual intention to refer the disputes to arbitration. The agreement must contemplate a binding and enforceable resolution of disputes. There must be both clarity and certainty in an arbitration clause. There is something incomplete and tentative about the arbitration clause and the same requires the parties to arrive at a further agreement to go to arbitration. An agreement requiring further consent is not a binding arbitration agreement. There is an element of contingency which is left in the arbitration clause which makes the same tentative, optional and incapable of enforcement. It is not the role of any Court to fill in the gaps in case the arbitration clause is inaccurately or inartistically drafted. In this connection, the decision in *Visa International Ltd. (Supra)* is distinguishable. In the said decision, the arbitration clause provided that the disputes “shall be finally settled”. The use of the word ‘shall’ indicated a clear binding and unequivocal intention of the parties to refer the disputes to arbitration. To this extent, the mere use of the word ‘Arbitrator’ is irrelevant and is not conclusive insofar

as the arbitration clause is concerned. [*Jagdish Chander v. Ramesh Chander & Ors.* (Supra), *BGM and M-Rpl-Jmct (JV) v. Easter Coalfields Limited* (Supra). *BVEPL Bhartia (JV) v. State of West Bengal & Ors.* (Supra). *South Delhi Municipal Corporation of Delhi v. SMS Limited* (Supra)].

7. In view of the above, the present application is dismissed both on the grounds of maintainability and on the merits.

(Ravi Krishan Kapur, J.)