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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-105-2026 (O&M)
Date of decision: 30.04.2026

M/S APARNA ENTERPRISES

...Applicant(s)

VERSUS

M/S FRESHPRO AGRI SOLUTION PVT. LTD. AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Nitin Goel, Advocate and
Mr. Vijay Kumar, Advocate for the applicant.

JASGURPREET SINGH PURI, J. (Oral)

CM-8814-CII-2026

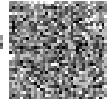
Prayer in this application is for placing on record the Original Retaining Agreement dated 09.02.2023 (Annexure P-9).

For the reasons mentioned in the application, the same is allowed. The Original Retaining Agreement dated 09.02.2023 (Annexure P-9) is taken on record, subject to all just exceptions.

ARB-105-2026

1. The present application has been filed under Section 11(6) 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 was an agreement between the applicant and the respondents and the original retaining



agreement has been placed on record as Annexure P-9, which although is signed by the respondents but it has not been signed by the applicant. He further submitted that since the agreement has been signed by the respondents and not by the applicant, still the applicant is willing to refer the matter to a Sole Arbitrator and in pursuance of Clause 9 of the aforesaid agreement, the matter may be referred to an independent Sole Arbitrator.

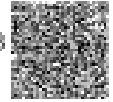
3. I have heard the learned counsel for the applicant.

4. Admittedly, the agreement which is stated to be the original retaining agreement and filed by the applicant as Annexure P-9 has not been signed by the applicant and it has only been signed by the respondents. Be that as it may, this Court still has to see the relevant clause which is sought to be invoked by the applicant in the present case. The relevant clause in the aforesaid agreement is Clause 9, which is reproduced as under:-

“9. Arbitration:

Any dispute arising with regard to any aspect of this Agreement shall be settled through mutual consultations and agreements by the parties to the Agreement. In case it is required a sole arbitrator mutually agreed can also be appointed to settle the dispute.”

5. A perusal of the aforesaid would show that although the heading and title of the aforesaid clause is stated to be “Arbitration” but the body of the aforesaid clause would show that it consists of two phases. As per the first phase, it is stated that in case any dispute arises with regard to the agreement, the same shall be settled through mutual consultations and agreements by the parties to the agreement. Thereafter, as per the second phase, it is provided that



“in case it is required”, a Sole Arbitrator mutually agreed can be appointed to settle the dispute. A further perusal of the aforesaid clause would show that the intention of the parties appears to be that when the first phase is not fruitful, then the second phase begins, wherein it is so provided that the parties will decide upon the appointment of an Arbitrator. It is clear from the language of the aforesaid clause, which uses the expression “in case it is required” and thereafter, the expression “can also”. Therefore, it appears that there was no clear intention of the parties by way of the aforesaid arbitration clause to refer the dispute to an Arbitrator but it was for the parties still to agree as to whether the matter is required to be referred to arbitration or not.

6. A similar issue has been discussed in detail by Hon’ble Supreme Court in **BGM and M-RPL-JMCT (JV) versus Eastern Coalfields Limited, 2025 SCC Online SC 1471**, wherein a similar kind of clause was dealt with, whereby the expression which was used in that case was “sought to be agreed”.

The relevant portion of the aforesaid judgment is reproduced as under:-

“13. Having regard to the facts and the submissions made before us, we are of the view that following three issues arise for our consideration:

(i) Whether the question of existence of an arbitration agreement should be left for the arbitral tribunal to decide?

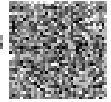
(ii) Whether clause 13 (supra) would constitute an arbitration agreement between the parties as contemplated under Section 7 of the 1996 Act?

(iii) Whether clause 32 of Instructions to Bidders negates the existence of an arbitration agreement?

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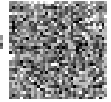


“22. The principles regarding what constitutes an arbitration agreement were summarized by this Court in **Jagdish Chander (supra)** in the following terms: -

“8.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.

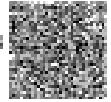
(ii) Even if the words 'arbitration' and 'arbitral tribunal (or arbitrator)' are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause 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 excludes 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

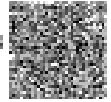


agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as "parties can, if they so desire, refer their disputes to arbitration" or "in the event of any dispute, the parties may also agree to refer the same to arbitration" 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."

(Emphasis supplied)

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23. In **Jagdish Chander (supra)**, the issue that arose for consideration was whether paragraph 16 in the partnership agreement constituted an arbitration

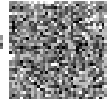


agreement. Clause 16 under consideration there, is extracted below:

"16) If during the continuance of the partnership or at any time afterwards any dispute touching the partnership arises between the partners, the same shall be mutually decided by the partners or shall be referred for arbitration if the parties so determine."

While holding that clause 16 did not constitute an arbitration agreement, this Court observed:

"9. Para 16 of the Partnership deed provides that if there is any dispute touching the partnership arising between the partners, the same shall be mutually decided by the parties or shall be referred to arbitration if the parties so determine. If the clause had merely said that in the event of disputes arising between the parties, they "shall be referred to arbitration", it would have been an arbitration agreement. But the use of the words "shall be referred for arbitration if the parties so determine" completely changes the complexion of the provision. The expression "determine" indicates that the parties are required to reach a decision by application of mind. Therefore, when clause 16 uses the words "the dispute shall be referred for arbitration if the parties so determine", it means that it is not an arbitration agreement but a provision which enables arbitration only if the parties mutually decide after due consideration as to whether the disputes should be referred to arbitration or not. In effect, the clause requires the consent of parties before the disputes can be referred to arbitration. The main attribute of an



arbitration agreement, namely, consensus ad idem to refer the disputes to arbitration is missing in clause 16 relating to settlement of disputes. Therefore, it is not an arbitration agreement, as defined under section 7 of the Act. In the absence of an arbitration agreement, the question of exercising power under section 11 of the Act to appoint an Arbitrator does not arise."

(Emphasis supplied)

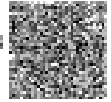
24. In **Mahanadi Coalfields (supra)**, this court was required to consider whether clause 15 constituted an arbitration agreement. Clause 15 under consideration there, is extracted below:

"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.

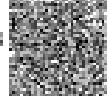
15.2 If differences still persist, the settlement of the dispute with Govt. Agencies shall be dealt with as per the Guidelines issued by the Ministry of Finance, Govt. of India in this regard. In case of parties other than Govt. Agencies, the redressal of the disputes may be sought in the Court of Law."

25. Following the decision in **Jagdish Chander (supra)**, this Court, in **Mahanadi Coalfields (supra)**, held that



Clause 15 of the Contract Agreement though is titled "Settlement of Disputes /Arbitration", the substantive part of it makes it abundantly clear that there is no arbitration agreement between the parties to refer either present or future dispute to arbitration.

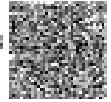
*26. What is clear from the judgment in **Mahanadi Coalfields (supra)** is that mere use of the word "arbitration" or "arbitrator" in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. In **Jagdish Chander (supra)**, 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, were found not indicative of 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" would not constitute an arbitration agreement. Because 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. This is so, because such clauses require the parties to arrive at a further agreement to go to arbitration, as and when disputes arise. Therefore, 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."*



7. Thereafter, in another judgment of Hon'ble Supreme Court in **Nagreeka Indcon Products Pvt. Ltd. versus Cargocare Logistics (India) Pvt. Ltd., 2026 INSC 384**, while referring to the clause of that case and also to the aforesaid judgment of Hon'ble Supreme Court in **BGM and M-RPL-JMCT (JV) (Supra)**, it was observed that the clause which was the subject matter of dispute of that case merely indicated a future possibility of referring disputes to arbitration and therefore, was held to be not a binding arbitration agreement. The relevant portion of the aforesaid judgment is reproduced as under:-

*“13. Turning to the words used in Clause 25, we find it to stipulate to the effect that if there is any dispute between the parties, they can settle the same by arbitration. In view of **Jagdish Chander** (supra) which holds as under:*

“(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

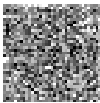


agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future.”

The clause subject matter of dispute in this appeal indicates merely the future possibility of referring disputes to arbitration and as such, it cannot be said to be a binding arbitration agreement. In other words, the possibility of arbitration being used to settle disputes is open however, for the disputes to be settled by arbitration, further agreement between the parties would be required and needless to add, such an agreement can only come into existence when both parties agree to the same. In that view of the matter, we are of the considered view that this appeal is bereft of merit. It is accordingly dismissed.”

8. A careful perusal of the Clause 9, which has been referred to by the learned counsel for the applicant and as reproduced above, which is the subject matter of the present case would show that the intention of the parties appears to be that the dispute, if not settled through mutual agreement may thereafter be agreed to be referred to a Sole Arbitrator. This intention of the parties is clear from the expression used “in case it is required” and therefore, it is clear that there was no intention of the parties by virtue of the aforesaid clause to refer the matter to arbitration but in case it was required, then in future it could have been referred.

9. In view of the aforesaid facts and circumstances, this Court is of the considered view that the aforesaid Clause 9 cannot be construed to be as an arbitration clause that can be invoked for referring the matter to arbitration under Section 11 of the Act.



10. Consequently, finding no merit in the present arbitration case, the same is hereby dismissed.
11. At this stage, learned counsel for the applicant submitted that by way of the aforesaid miscellaneous application, the applicant has placed on record the original retaining agreement between the parties and prays that he may be permitted to take back the same.
12. In case an appropriate application is made by the applicant to the Registry of this Court, the original retaining agreement be returned to the applicant.
13. Miscellaneous applications, if any, shall also stand disposed of.

30.04.2026
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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