

227

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ARB-230-2023(O&M)
Date of Decision: 19.03.2026**

**ADITYA BIRLA REAL ESTATE LIMITED (FORMERLY CENTURY
TEXTILES AND INDUSTRIES LIMITED)**

....Petitioner(s)

Versus

ORIENT CRAFT LIMITED

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

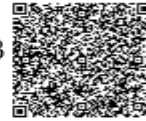
Present: Ms. Ojaswini Gagneja, Advocate,
for the petitioner.

Ms. Bhumi Sharma, Advocate,
(Through Video Conferencing) and
Mr. Jaiveer Singh, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

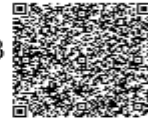
1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of a Sole Arbitrator.

2. Ms. Ojaswini Gagneja, learned counsel appearing on behalf of the petitioner submitted that in the present petition there were 20 purchase orders, which were issued by the respondents to the petitioner for the purchase of fabric and which have been attached with the present petition as Annexure P-1(Colly) and in this way, the petitioner was to supply the fabric



to the respondents on the basis of said purchase orders after accepting the same. The parties in all the purchase orders are same and the purchase orders were issued on different dates individually but there is no separate mother agreement between the parties. However, all the purchase orders contain an arbitration clause in the form of a note appended to Clause 12, which provides that in the event of a dispute, the jurisdiction for arbitration will be Gurugram (Haryana) and in addition thereto, the dispute may also be referred to Forum of Consumers Rights in India at the discretion of the buyer. She submitted that the language of the arbitration clause used in all the purchase orders is identical.

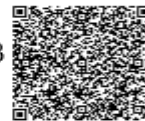
3. Learned counsel further submitted that the purchase orders issued by the respondents were accepted by the petitioner, which made the agreement as a concluded contract and the respondents who were to purchase the fabric also made certain payment to the petitioner. However, a dispute eventually arose between the parties pertaining to outstanding payments and quality of the fabric supplied. She submitted that in this way, the purchase orders issued by the respondent to the petitioner, which became a concluded contract, were acted upon by both the parties but a dispute has arisen with regard to the aforesaid subject matter. She submitted that the petitioner had initially issued a notice to the respondent with regard to certain payments to be made vide Annexure P-8 dated 04.02.2022. The respondent replied to the said notice vide Annexure P-9 dated 24.02.2022, wherein respondent denied the claim of the petitioner on the ground that the goods supplied were defective and not as per the required specifications and the petitioner had failed to perform its obligations to the satisfaction of the respondent. She submitted that in this way, the respondent has disputed



the quality of the products and ultimately a dispute arose between the parties and the respondent did not release the outstanding payment to the petitioner and therefore, the petitioner issued a notice under Section 21 of the Act vide Annexure P-13 dated 07.02.2023 invoking Clause 12 and also proposed the name of an Arbitrator to be appointed as a Sole Arbitrator but no response was received from the respondent. She further submitted that since the mechanism for appointment of an Arbitrator has failed, the present petition has been filed under Section 11 of the Act for appointment of an independent Sole Arbitrator by this Court.

4. She submitted that since there are 20 different purchase orders between the same parties each containing an identical arbitration clause, single Arbitrator may be appointed by constituting 20 separate Arbitral Tribunals for each purchase order. She referred to a judgment of Hon'ble Supreme Court in *M/s Govind Rubber Ltd. vs. M/s Louids Dreyfus Commodities Asia Pvt. Ltd., 2015 (13) SCC 477* and also Gujarat High Court in *Alphard Maritime Pvt. Ltd. vs. Malara Enterprises, R/PETN. Under Arbtration Act No.40 of 2020, decided on 23.04.2021.*

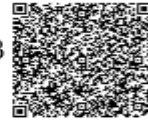
5. On the other hand, Ms.Bhumi Sharma, learned counsel appearing on behalf of the respondents through video conferencing along with Mr. Jaiveer Singh, Advocate appearing through physical hearing submitted that the aforesaid Clause 12, as referred to by the learned counsel for the petitioner cannot be termed as an arbitration clause. She submitted that so far as the 20 purchase orders which have been annexed with the present petition are concerned, the same are between the same parties and there is no dispute with regard to the same. She further submitted that all the purchase orders contain an identical clause i.e. Clause 12 as referred to by



the learned counsel for the petitioner regarding which also there is no dispute. She also submitted that it is not in dispute that the purchase orders were issued by the respondent to the petitioner and some payments were made but eventually a dispute arose between the parties pertaining to payments and the quality of the products. She further submitted that there is no dispute with regard to the fact that the petitioner had issued a notice for invocation of the aforesaid clause by proposing the name of an Arbitrator regarding which also there is no dispute. She however submitted that the present petition is not maintainable because there is no specific clause pertaining to an arbitration process to be followed and in the absence of a valid arbitration clause, a petition under Section 11 of the Act would not be maintainable. She submitted that the purchase orders have not been signed by any of the parties and as per Clause 12 itself, it provides for the confirmation receipt of the purchase order by way of a signed copy with acceptance of all the terms and conditions, which has not been fulfilled in the present case and in the absence of the purchase orders having been sent by way of a signed copy with acceptance of all the terms and conditions, the same cannot be considered to be a concluded contract and since there is no concluded contract, the present petition under Section 11 of the Act is not maintainable. She further submitted that the intention of the parties to refer the disputes to arbitration cannot be inferred from the language of the aforesaid Clause 12.

6. I have heard the learned counsel for the parties.

7. The relevant Clause 12 of the purchase orders which according to the learned counsel for the petitioner is an arbitration clause and which



according to the learned counsel for the respondent is not an arbitration clause is reproduced as under:-

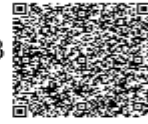
“12. Pls confirm receipt of Purchase Order and send back to us signed copy with acceptance of all terms and conditions.

***Note:-** In the event of dispute the jurisdiction for the arbitration will be Gurgaon (Haryana), India and matter relating to the dispute may also be referred to Forum of Consumers rights in India at the discretion of the buyer.”*

...(emphasis supplied)

8. A perusal of the note appended with the aforesaid Clause 12 would show that it provides that in the event of a dispute, the 'jurisdiction for arbitration' will be Gurugram (Haryana), India. In addition to the above, it is also provided that the dispute may also be referred to the Forum of Consumers Rights in India at the discretion of the buyer.

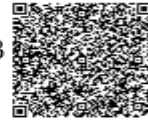
9. It was first argument of learned counsel for the petitioner that since Clause 12 provides that if a dispute arise between the parties, then the jurisdiction for arbitration will be Gurugram clearly means that there is *prima facie* existence of an arbitration clause, although no detailed mechanism has been provided. However, it was the argument of learned counsel for the respondent that the aforesaid clause does not constitute an arbitration clause because it does not convey any intention of the parties by meeting of their minds to refer the disputes to arbitration. Learned counsel for the respondents has also referred to the first line of Clause 12 wherein it is provided that there has to be a confirmation of receipt of the purchase order by way of a signed copy with acceptance of the terms and conditions which is absent in the present case.



10. Before proceeding to the facts of the case, it is necessary to first examine the legal position as to whether the language of Clause 12 constitutes an arbitration clause or not.

11. Learned counsel for the petitioner has relied upon a judgment of Hon'ble Supreme Court in *M/s Govind Rubber Ltd.'s case (supra)* by contending that a commercial document containing an arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it. The relevant portion of the aforesaid judgment is reproduced as under:-

*“17. We are also of the opinion that a commercial document having arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it. On the principle of construction of a commercial agreement, Scrutton on Charter Parties (17th Edition, Sweet & Maxwell, London, 1964) explained that commercial agreement has to be construed, according to the sense and meaning as collected in the first place from the terms used and understood in the plain, ordinary and popular sense (See Article 6 at page 16). The learned Author also said that the agreement has to be interpreted 'in order to effectuate the immediate intention of the parties. Similarly, Russel on Arbitration (21st Edition) opined, relying on **Astro Vendeor Compania Naviera SA v. Mabanafi GmbH, (1970) 2 Llyod's Rep.267**, that the Court should, if the circumstances allow, lean in favour of giving effect to the arbitration clause to which the parties have agreed. The learned Author has also referred to another judgment in **Paul Smith Ltd v. H and S International Holdings Inc., (1991) 2 Llyod's Rep.127** in order to emphasise that in construing an arbitration agreement the Court should seek to 'give*



effect to the intentions of the parties'. (See page 28 of the book)."

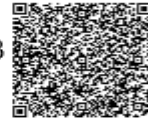
12. Hon'ble Supreme Court in ***Mahanagar Telephone Nigam Ltd. vs. Canara Bank and others, 2020(12) SCC 767***, held that even without a formally executed arbitration clause a valid arbitration agreement can be inferred from the conduct of parties.

13. The Gujarat High Court in ***Alphard Maritime Pvt. Ltd.'s case (supra)*** also deals with a similar arbitration clause as in the present case. The arbitration clause of ***Alphard Maritime Pvt. Ltd.'s case (supra)*** reproduced in para No.2 of the aforesaid Gujarat High Court judgment is as follows:-

"13. Jurisdiction of arbitration will be at the High Court of Gujarat."

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

"15. The bone of contention raised by Mr. Contractor appearing for the respondents is that the purchase order issued by the petitioner did not contain the arbitration clause. The Court does not find any substance in the said submission. Merely because the purchase order issued by the petitioner did not contain any terms and conditions or the arbitration clause, it could not be said that there was no arbitration clause, more particularly when the quotation of the respondents, containing the arbitration clause was accepted by the petitioner, and on the basis of which the purchase order was issued by the petitioner. There is also nothing on record to suggest that the parties had contemplated a further or fresh consent for reference of disputes to the arbitration. The said Clause 13



contained in the quotation of the respondents having neither been denied nor modified by the petitioner till the entire contract was executed, it can safely be concluded that both the parties were ad-idem about the said clause pertaining to the arbitration. It does not lie in the mouth of the respondents to say that the clause-13 which stated that the jurisdiction of arbitration will be at the High Court of Gujarat, was not binding to them or that there was no arbitration agreement as contemplated in Section 7 of the said Act. From the said documents on record namely the quotation of the respondents and the purchase order of the petitioner, it clearly transpires that both the parties intended to refer the disputes to the arbitration and agreed that the jurisdiction of the arbitration will be at the High Court of Gujarat.

15. The aforesaid judgment of Gujarat High Court in ***Alphard Maritime Pvt. Ltd.'s case (supra)*** was assailed before the Hon'ble Supreme Court in SLP No.7284 of 2021 and the order dated 13.07.2022 was passed which is reproduced as under:-

“In the peculiar fact situation of the present case, we decline to interfere in this special leave petition. The special leave petition is accordingly dismissed, leaving the question of law open.

Having dismissed the Special Leave Petition, we grant liberty to the petitioners to file reply/written statement before the Arbitrator within four weeks from today, including to take out any application for appropriate relief as may be permissible in law.

Pending applications are also disposed of.”



16. In this way, the clause pertaining to arbitration in the aforesaid judgment of the Gujarat High Court and the clause pertaining to arbitration in the present case are similar in language and again for the sake of repetition the said clauses are reproduced herein under:-

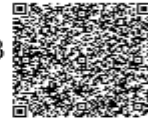
Arbitration clause in the present case	Arbitration clause in the <i>Alphard Maritime case</i>
<i>12. Pls confirm receipt of Purchase Order and send back to us signed copy with acceptance of all terms and conditions.</i> <i>Note:- In the event of dispute the jurisdiction for the arbitration will be Gurgaon (Haryana), India and matter relating to the dispute may also be referred to Forum of Consumers rights in India at the discretion of the buyer.”</i>	<i>13. Jurisdiction of arbitration will be at the High Court of Gujarat.”</i>

17. Hon’ble Supreme Court declined to interfere with the aforesaid judgment of Gujarat High Court in the Special Leave Petition. However, the question of law was kept open.

18. In this way, in the aforesaid judgment of the Gujarat High Court in ***Alphard Maritime Pvt. Ltd.'s case (supra)***, it was held that such a clause would mean that there is an arbitration clause which can be given effect to and these observations were upheld by the Hon’ble Supreme Court.

19. Hon’ble Supreme Court in ***Vidya Drolia vs. Durga Trading Corporation, (2021) 2 SCC 1*** held that the Court should refer a matter if the validity of the arbitration agreement cannot be determined on a *prima facie* basis and devised the Rule “when in doubt, do refer”.

20. Coming to the facts of the present case the purchase orders which are 20 in number are in dispute. Rather the purchase orders have been issued by the respondent to the petitioner and the petitioner has accepted the same and thereafter money transactions have also taken place but eventually



a dispute has arisen with regard to payments and the quality of the products. This is also clear from the reply which was given by the respondent to the initial notice issued by the petitioner vide Annexure P-8 and in the reply (Annexure P-9), it was stated by the respondent that the petitioner had failed to perform and deliver services to the satisfaction of the respondent since the same were defective and not as per the specifications. In this way, it is clear that the contract between the parties was acted upon by both the parties and it is only in the event of cropping up of a dispute that the present petition has been filed.

21. An argument was raised by learned counsel for the respondent with regard to the first line of Clause 12 of the purchase order, as reproduced above that after the receipt of the purchase order, there had to be confirmation of receipt of the purchase order and a signed copy had to be sent with acceptance of all terms and conditions and since the same was not signed, it will not be deemed to be a contract and therefore the arbitration clause, if any, cannot be acted upon. The aforesaid argument raised by the learned counsel for the respondent is misconceived and contrary to law. Section 7(4) of the Act is reproduced as under:-

“Section 7(4) — Arbitration agreement.

An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.”

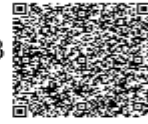


22. The aforesaid provision has also been discussed by the Hon’ble Supreme Court in ***Glencore International AG vs. M/s Shree Ganesh Metals and another, 2025 SCC Online SC 1815*** and once the parties have already acted upon the purchase order, then the aforesaid plea is not available to the respondent in this regard. From a perusal of the note appended with Clause 12, it becomes very clear that there is a *prima facie* existence of an arbitration clause, although a detailed mechanism has not been so provided and therefore, this Court is of the considered view that both the essential conditions for appointment of an Arbitrator under Section 11 of the Act stand satisfied namely, *prima facie* existence of an arbitration clause and its invocation thereof by issuance of a notice.

23. Apart from the above, it is a settled law that the reference court under Section 11 would not hold a mini trial and would only see the aforesaid two conditions at the time of reference stage, nothing more, nothing less. Reference in this regard may be made to the judgment of a Constitution Bench of Hon’ble Supreme Court in **“Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re” (2024) 6 SCC 1** where the law has been clearly laid down.

24. Therefore, this Court deems it fit and proper to appoint a single Arbitrator to constitute twenty separate Arbitral Tribunals for each purchase order. Details of the aforesaid purchase orders are tabulated hereinunder:-

Sr. No.	Purchase Order No.& Date
1.	OBHF/0000000273 DT. 20/08/2019
2.	OBHF/0000000274 DT. 20/08/2019
3.	OBHF/0000000277 DT. 23/08/2019
4.	OBHF/0000000284 DT. 24/08/2019



5.	OBHF/0000000287 DT. 24/08/2019
6.	OBHF/0000000287 DT. 24/08/2019
7.	OBHF/0000000292 DT. 28/08/2019
8.	OBHF/0000000293 DT. 28/08/2019
9.	OBHF/0000000294 DT. 28/08/2019
10.	OBHF/0000000295 DT. 28/08/2019
11.	OBHF/0000000296 DT. 28/08/2019
12.	OBHF/0000000304 DT. 28/08/2019
13.	OBHF/0000000305 DT. 28/08/2019
14.	OBHF/0000000307 DT. 29/08/2019
15.	OBHF/0000000308 DT. 29/08/2019
16.	OBHF/0000000309 DT. 29/08/2019
17.	OBHF/0000000310 DT. 29/08/2019
18.	OBHF/0000000318 DT. 09/09/2019
19.	OBHF/0000000323 DT. 06/09/2019
20.	OBHF/0000000324 DT. 07/09/2019

However, it is made clear that the aforesaid learned Sole Arbitrator appointed shall remain the same in all the twenty arbitration proceedings.

25. Consequently, the present petition is allowed. Hon'ble Mr. Justice Ajay Tewari, a former Judge of this Court, resident of H.No.3038, Sector21-D, Chandigarh, # R-8, Third Floor, Green Park Extension, New Delhi, Mobile No.9780008141, Email ID: ajaytewarichandigarh@gmail.com, is nominated as the Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions including Section 12 of the Act.

26. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

27. Fee shall be paid to the learned Arbitrator in accordance with the Fourth Schedule of the Arbitration Act, as amended.



28. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.
29. A request letter alongwith a copy of the order be sent to Hon'ble Mr. Justice Ajay Tewari, a former Judge of this Court.

19.03.2026

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No
: Yes/No