

ARB-780-2025 (O&M)

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

**ARB-780-2025 (O&M)
Date of Decision: 10.04.2026**

SRS Building Material Supplier

.... Applicant

Versus

M/s S.B. Associates

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

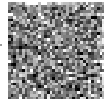
Present: Mr. B.S. Tewatia, Advocate,
for the applicant.

Mr. Akash Yadav, Advocate,
for the respondent.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') praying for appointment of an independent Sole Arbitrator to adjudicate upon the disputes and differences which have arisen between the parties.

2. Learned counsel for the applicant submitted that there was an Agreement executed between the applicant and the respondent which has been attached with the present application vide Annexure P-1 and the same is in the nature of a Sub-Contract Agreement dated 26.06.2018. The said agreement contains a valid arbitration clause i.e. Clause 11 which provides for reference of dispute to a Sole Arbitrator. He further submitted that since a dispute arose between the parties, the applicant has invoked the aforesaid arbitration clause by issuing a notice under Section 21 of the Act to the respondent vide Annexure P-6 dated 28.10.2025. However, no response was received from the respondent in this regard. Therefore, the present



application has been filed for appointment of an independent Sole Arbitrator by this Court.

3. Learned counsel further submitted that the aforesaid notice was sent by way of a registered post dated 30.10.2025 and inadvertently the receipt of the same could not be attached with the present application and has sought permission from this Court to place on record the original receipt of the same. The original receipt which has now been produced before the Court is permitted to be taken on record as Mark 'X'. Registry is directed to tag the same at an appropriate place along with the paper-book.

4. On the other hand, learned counsel for the respondent has submitted that there is no dispute with regard to the aforesaid Agreement executed between the parties vide Annexure P-1 and there is also no dispute with regard to the existence of Clause 11 in the Agreement which has been so relied upon by learned counsel for the applicant. He further submitted that he has got two-fold objections in the present case on the basis of which the present application is liable to be dismissed. Firstly, neither the applicant issued any notice to the respondent under Section 21 of the Act for invoking the aforesaid arbitration clause nor it was received by the respondent and therefore, the present application is not maintainable. Secondly, Clause 11 of the Agreement which has been relied upon by learned counsel for the applicant cannot be invoked as an arbitration clause because there is no intention of the parties shown in the aforesaid clause to suggest that by way of the aforesaid clause the parties have agreed to refer the matter to arbitration. However, on the other hand, as per the aforesaid clause it was so decided that the matter 'may' be referred in future for the arbitration subject to the fulfilment of the conditions contained in the agreement and since there

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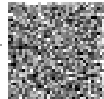
is no valid arbitration clause, the present application is liable to be dismissed.

5. I have heard learned counsels for the parties.

6. The agreement between the parties is not in dispute and the aforesaid clause is also not in dispute. First objection which has been raised by learned counsel for the respondent was that the applicant had not issued any notice invoking the arbitration clause and therefore, the present application is liable to be dismissed. However, during the course of argument, learned counsel for the applicant has produced the original receipt of service by way of a speed post of Annexure P-4 and that has already been taken on record as Mark 'X'. Once the notice has been issued through registered post then the same would be considered as a valid service of notice unless it is shown that the address was not the last known address. However, in the present case the address of the respondent has not been disputed and therefore, this objection raised by learned counsel for the respondent that there was no invocation of arbitration clause by issuance of a notice is misconceived and is liable to be rejected.

7. So far as the second objection raised by learned counsel for the respondent is concerned, the same is also required to be analysed and read in the context of the clause which the learned counsel for the applicant contends to be an arbitration clause. Therefore, the aforesaid Clause 11 is reproduced as under:-

“11. Any dispute or difference between the parties arising out of or touching upon the conditions covered under this agreement may be settled amicable by the Managing Director/Partner/Proprietor of PARTY-A & PARTY-B. In the event of disagreement, they may refer such

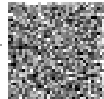


dispute/differences Sole arbitrator if the parties in dispute so agree, otherwise one arbitrator nominated by each of the PARTY. In the case of differences of opinion between them the decision of the umpire selected by them and the proceedings conducted as per Arbitration & Conciliation and binding on both the parties. However, the progress of the work will not be affected during arbitral proceedings or dispute resolving period.”

8. A perusal of the same would show that it provides that in case any dispute or difference arises between the parties, the matter will be settled amicably by the Managing Director/Partner/Proprietor of both the parties i.e. Party-A and Party-B. This is the first part of the aforesaid agreement. In the second part, it is further provided that in the event of any disagreement, they may refer such dispute/difference to a Sole Arbitrator **if the parties in dispute so agree** and it further provides that otherwise one Arbitrator will be nominated by each party. In this way, it clearly shows that a Sole Arbitrator is to be appointed only when the parties agree in this regard. Before further analysing the meaning and effect of the aforesaid clause, it will be just and proper to refer to the law laid down by Hon’ble Supreme Court in this regard. Hon’ble Supreme Court in “**BGM and M-RPL-JMCT (JV) Vs. Eastern Coalfields Limited**”, 2025 SCC Online SC 1471, dealt with the clause wherein the parties were required to agree in future because of the expression used “*sought to be agreed*”. The relevant paragraphs 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?

xxx

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xxx

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.

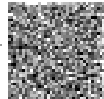
(ii) Even if the words 'arbitration' and 'arbitral tribunal (or arbitrator)' are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause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

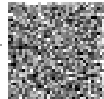
(Emphasis supplied)

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



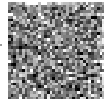
the words "the dispute shall be referred for arbitration if the parties so determine", it means that it is not an arbitration agreement but a provision which enables arbitration only if the parties mutually decide after due consideration as to whether the disputes should be referred to arbitration or 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.”

9. A careful perusal of the aforesaid Clause 11 which is the subject matter of the present application would show that the intention of the parties in the present clause appears to be that in case the dispute is not settled between the Managing Director/Partner/Proprietor of both the parties and there is a disagreement between them, they may agree to refer the dispute to a Sole Arbitrator and if not Sole Arbitrator then one Arbitrator will be appointed by each party. Essence of the aforesaid clause would show that in the clause itself there is no meeting of minds pertaining to appointment of an Arbitrator either sole or a tribunal but it so provides that in case of disagreement between the Managing Director/Partner/Proprietor, **then they may agree** to appoint a Sole Arbitrator and if not Sole Arbitrator, then one Arbitrator from each of the party. In this way, it is very clear from the language of the clause that the intention of the parties is not to go for arbitration as per the aforesaid clause but to further decide in future in this regard.

10. The aforesaid Clause 11 does not satisfy the test of *prima facie* existence of an arbitration clause since it is clear from the intention of the parties that in case of difference/dispute, the parties may agree to refer in future to the arbitration either by Sole Arbitrator or an Arbitral Tribunal.

11. In view of the aforesaid facts and circumstances, this Court is of the considered view that the aforesaid objection raised by learned counsel

for the respondent with regard to absence of intention of the parties to arbitrate in context of the arbitration clause would sustain because there is no *prima facie* existence of an arbitrtqation clause contained in the agreement (Annexure P-1).

12. Consequently, the present application is hereby dismissed.

10.04.2026

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

1. Whether speaking/reasoned:

Yes/No
2. Whether reportable:

Yes/No