2026:PHHC:045833

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ARB-527-2025 (O&M)
Date of decision: 11.03.2026

RAYAT EDUCATIONAL AND RESEARCH TRUST (REGD.)
...Applicant(s)

VERSUS

PUNJAB SKILL DEVELOPMENT MISSION
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Ms. Mehak Kapoor, Advocate for
Mr. Jatin Bansal, Advocate for the applicant.

Mr. D. S. Bhinder, Advocate for the respondent.

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JASGURPREET SINGH PURI, J.

1. The present application has been filed under Section 11 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 appearing on behalf of the applicant submitted that a Memorandum of Understanding (MOU) dated 13.01.2020 (Annexure P-3) was executed between the parties and the said MOU contains an arbitration clause i.e. Clause 8, which provides that dispute arising in connection with the MOU, which cannot be resolved amicably, shall be referred to the Empowered Committee for DDUGKY in the Ministry of Rural Development, Government of India, whose decision shall be final and binding on all parties. She further

submitted that the heading of the aforesaid Clause is “Arbitration and Applicable Laws” and considering the fact that the clause provides for arbitration and a dispute had arisen between the parties, the applicant invoked the aforesaid arbitration clause by issuing a notice dated 15.03.2024 (Annexure P-10), proposing the name of an Arbitrator but no response was received from the respondent and therefore, the present application has been filed seeking appointment of an independent Arbitrator.

3. On the other hand, Mr. D. S. Bhinder, learned counsel for the respondent submitted that the present arbitration case is liable to be dismissed on the ground that the aforesaid Memorandum of Understanding (MOU) does not contain any arbitration clause. While referring to the aforesaid Clause, he submitted that the mere fact that the heading of the Clause is “Arbitration and Applicable Laws” would not mean that there was any meeting of minds or intention of the parties to refer the matter to arbitration in case a dispute arose between the parties because even as per the aforesaid Clause, any dispute arising between the parties in connection with the MOU, which cannot be resolved amicably, is to be referred to the Empowered Committee for DDUGKY in the Ministry of Rural Development, Government of India and the said Clause does not provide for referral to an Arbitrator. He further submitted that in a similar case bearing No.***ARB-260-2025***, titled as ***All India Society for Electronics and Computer Technology (AISECT) versus Haryana State Rural Livelihoods Mission (HSRLM) and others***, decided on ***04.12.2025***, although the case pertained to the State of Haryana but the Clause in question was similar to the present case. The aforesaid arbitration case was dismissed on the

ground that although the heading of the Clause was “Arbitration and Applicable Laws” but the dispute was to be referred to the Empowered Committee and this Court did not appoint any Arbitrator and therefore, the present arbitration case is squarely covered by the aforesaid judgment passed by this Court and is liable to be dismissed.

4. Learned counsel appearing on behalf of the applicant while responding to the arguments raised by the learned counsel for the respondent submitted that the aforesaid judgment dated 04.12.2025 is distinguishable from the present case because there are various other facts in the present case according to which the clause would be regarded as an arbitration clause. To substantiate her arguments, she submitted that although Clause 8 provided that the dispute is to be referred to the Empowered Committee but the heading of the Clause is “Arbitration and Applicable Laws” and the applicant had earlier filed a petition under Section 9 of the Act against the respondent vide Annexure P-11 before the learned Additional District Judge, Chandigarh bearing Arbitration Petition No.349 of 2024 and in paragraph No.17 of the aforesaid petition, it was specifically stated by the applicant that in view of Clause 8 of the “Arbitration and Applicable Laws”, the dispute is required to be adjudicated and since there is a provision for arbitration, the name of an Advocate was nominated to act as an Arbitrator. She submitted that when the respondent filed a reply to the petition under Section 9 of the Act vide Annexure P-13, it was admitted by the respondent that there exists an arbitration clause not only in the preliminary submissions but also in reply on merits to the aforesaid paragraph No.17 of the petition and since the respondent has admitted the existence of an

arbitration clause, it cannot now be permitted to take the aforesaid plea that no arbitration clause exists. She further submitted that considering the conduct of the parties, whereby the intention has been made clear by the respondent that there exists an arbitration clause, the respondent cannot be permitted to raise the aforesaid objection before this Court.

5. In this regard, learned counsel appearing on behalf of the applicant referred to the provisions of Section 7(4)(c) of the Act, which provide that an arbitration agreement is deemed to be in writing if it is contained in 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. She submitted that in this way, the present arbitration case is distinguishable from the aforesaid arbitration case which was referred to by the learned counsel for the respondent because in the present case, the conduct of the parties shows that the arbitration clause has been admitted in the reply filed to the petition under Section 9 of the Act. She also submitted that by filing the aforesaid reply, in which the respondent has admitted the arbitration clause, the respondent has waived its right to raise such an objection.

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

7. Before proceeding further, Clause 8 on the basis of which the present arbitration case has been filed, paragraph No.17 of the petition filed by the applicant under Section 9 of the Act and relevant paragraphs of the reply filed by the respondent to the petition under Section 9 of the Act, are required to be reproduced below:-

"8. Arbitration and Applicable Laws-

8.1 The parties hereby agree that any controversy, claim or dispute arising in connection with this MoU, and which cannot be resolved amicably shall be referred to the Empowered Committee for DDUGKY in the Ministry of Rural Development, Government of India, whose decision shall be final and binding on all parties.

8.2 All disputes shall be resolved as per the Government of India policies and applicable Indian laws.

8.3 In case of judicial remedy, where the Ministry of Rural Development is the First Deponent, the case shall be filed in New Delhi. In case for judicial remedy, where the First Deponent is State Skills Mission, the case shall be filed in the respective Court in the State Headquarters."

Paragraph No.17 of the petition filed under Section 9 of the Act:-

"17. That in view of Clause 8-Arbitration and applicable laws, there being a dispute in view of the aforesaid assertions challenging the entitlement of the Department from claiming the aforesaid disputed amount and consequent blacklisting, the dispute is required to be adjudicated and since there is provision of arbitration, the Petitioner has nominated Shri Karajveer Singh (Advocate) to act as an Arbitrator for adjudication of the disputes raised inter se the parties vide notice dated 15.03.2024. The copy of the said notice dated 15.03.2024 issued u/s 21 of the Arbitration and Conciliation Act, 1996 is annexed herewith as ***Annexure P-9****."*

Relevant paragraphs of the reply filed by the respondent to the petition under Section 9 of the Act:-

Preliminary submissions

"1) That the petitioner has not come with lean hands before this Hon'ble Court and has concealed material facts from this Hon'ble Court. Although there is provision of Arbitration and application Laws as per clause 8 of the Memorandum of understanding signed between the parties, but as per clause 8 of MoU "any controversy, claim or dispute arising in connection with this MoU and which cannot be resolved amicably shall be referred to the

> *Empowered Committee for DDUGKY in the Ministry of Rural Development, Government of India whose decision shall be final and binding on all parties". In view of this clause the Petitioners are to give notice under Section 21 of the Arbitration & Conciliation Act, 1996 to Empowered Committee of DDUGKY Ministry of Rural Development, Government of India New Delhi. But no such notice has been given to it. Hence the instant petition is liable to be dismissed."*
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> *xxx-xxx-xxx-xxx*
>
> ***On merits***
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> *xxx-xxx-xxx-xxx*
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> *"17) That the contents of Para No.17 of the petition are correct to the extent that there is clause of arbitration, but prior to the arbitration clause as per the SOP there is provision of appeal also which the petitioner has failed to avail."*

8. A perusal of the aforesaid Clause 8.1 would show that although the heading of the Clause is stated as "Arbitration and Applicable Laws" but the substance of the Clause provides that any dispute arising in connection with the MOU, which cannot be resolved amicably, shall be referred to the Empowered Committee for DDUGKY in the Ministry of Rural Development, Government of India. Therefore, in the Clause itself, there is no such reference made to arbitration or to follow any arbitration process and the mere fact that the heading of the Clause states "Arbitration and Applicable Laws" would not mean that the same can be given the meaning of an arbitration clause. This Court in the aforesaid judgment in ***All India Society for Electronics and Computer Technology's case (Supra)*** discussed this issue in detail and in the aforesaid judgment as well, the Clause was identical in nature. The relevant portion of the aforesaid judgment passed by this Court on 04.12.2025 is reproduced as under:-

"5. Before proceeding further the aforementioned Clause No.8 on the basis of which the present petition has been filed, is required to be reproduced below:-

"8. Arbitration and Applicable Laws-

8.1. The parties hereby agree that any controversy, claim or dispute arising in connection with this MOU, and which cannot be resolved amicably shall be referred to the Empowered Committee for Aajeevika Skills in the Ministry of Rural Development, Government of India, whose decision shall be final and binding on all parties."

*6. A perusal of the aforesaid clause would show that although the heading of Clause No.8 is "**Arbitration and Applicable Laws,"** but neither the substantive part of the clause itself conveys any kind of intention of the parties to refer the matter to arbitration nor anything has been referred which shows intention of the parties to arbitrate. It only states that the parties agree that in case a dispute arises then the same will be resolved amicably by referring to the Empowered Committee for Aajeevika Skills in the Ministry of Rural Development, Government of India and whose decision will be final and binding on all the parties. In other words, although the heading of the aforesaid clause is "**Arbitration and Applicable Laws,"** the substantive portion of the clause contains no expression of intention on the part of the parties to refer any dispute to arbitration.*

*7. Hon'ble Supreme Court in **K.K. Modi v. K.N. Modi (1998) 3 SCC 573** laid down the relevant factors to determine the existence of an arbitration agreement. The relevant portion of the said judgment is reproduced as under:-*

> *17. Among the attributes which must be present for an agreement to be considered as an arbitration agreement are:*
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> *(1) The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement;*
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> *(2) that the jurisdiction of the tribunal to decide the rights of parties must derive either from the consent of the parties or from an order of the court or from a statute, the terms of which make it clear that the process is to be an arbitration;*

(3) the agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal'

(4) that the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides

(5) that the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly;

(6) the agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal."

8. Thereafter Hon'ble Supreme Court in ***Jagdish Chander v. Ramesh Chander & Ors., (2007) 5 SCC 719****, had an occasion to deal with this very position and the relevant portion is reproduced as under:*

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 v. U.P. Small Industries Corpn. Ltd. [(1999) 2 SCC 166] and Bihar State Mineral Development Corpn. 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 erms 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 exclude 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".

9. Furthermore, Hon'ble Supreme Court in ***Mahanadi Coalfields Ltd. and Anr. v. M/s IVRCL AMR Joint Venture, (2022) 20 SCC 636*** *observed that the clause of that case had the title of* ***"Settlement of Disputes/Arbitration,"*** *but the substantive part of the provision made it abundantly clear that no arbitration agreement between the parties was in existence and therefore, the matter could not have been referred to arbitration. The relevant clause therein reads as under:-*

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 government agencies shall be dealt with as per the Guidelines issued by the Ministry of Finance, Government of India in this regard. In case of parties other than government agencies, the redressal of the disputes may be sought in the court of law."

Hon'ble Supreme Court in that case held that the mere use of the word "Arbitration" in the title of the clause without any corresponding substantive part relating to arbitration could not be considered a valid arbitration agreement under Section 7 of the A&C Act.

10. Hon'ble Supreme Court in a recent judgment in ***M/s Alchemist Hospitals Ltd. V. M/s ICT Health Technology Services India Pvt. Ltd. (SLP (Civil) NO.19647-2024)*** *decided on 06.11.2025, while referring to all the aforesaid judgments, held that mere use of word arbitration is not sufficient to treat the clause as an arbitration agreement when the corresponding mandatory intent to refer the disputes to arbitration and the consequent intent to be bound by the decision of the arbitral tribunal is missing.*

11. A careful perusal of the above-mentioned judgments of Hon'ble Supreme Court and a judgment of Coordinate Bench of this Court in ***M/s Surya Wires Pvt. Ltd. (supra)*** *makes it clear that for a clause to qualify as an arbitration agreement, it is not sufficient to merely use the word "arbitration" in the heading. The substantive part of the clause must demonstrate a clear and mandatory intention to submit disputes to arbitration and to be*

> *bound by the decision of the arbitral tribunal. Applying these principles to the present Clause 8, while the heading refers to* ***"Arbitration and Applicable Laws,"*** *the substantive portion only provides for resolution by the Empowered Committee for Aajeevika Skills, whose decision is final and binding. The clause, therefore, does not satisfy the essential elements of an arbitration agreement.*
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> *12. After hearing learned counsels for the parties and in view of the law laid down by the Hon'ble Supreme Court in the abovementioned cases, this Court is of the view that Clause 8, on the basis of which the present petition has been filed, does not convey any intention to refer the matter to arbitration, nor has it been so stated in the substantive portion of the aforesaid clause. The reliance placed by learned counsel for the petitioner only on the heading* ***"Arbitration and Applicable Laws"*** *is not sufficient to suggest that the intention of the parties was to send the case for arbitration in case a dispute arises.*
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> *13. Consequently, finding no merit in the present case and the same is hereby dismissed."*

9. So far as the aforesaid Clause is concerned, the case of the respondent would certainly be covered by the aforesaid judgment passed by this Court since the Clause is similar in nature. However, the learned counsel appearing on behalf of the applicant has raised a plea that the facts of the present case are distinguishable from the aforesaid facts on the ground that the applicant filed a petition under Section 9 of the Act before the learned Additional District Judge, Chandigarh, which was replied to by the respondent vide Annexure P-13, in which the arbitration clause was admitted and therefore, by the conduct of the parties and by virtue of Section 7(4)(c) of the Act, the aforesaid Clause 8 shall be deemed to be the arbitration clause. The aforesaid argument raised by the learned counsel

appearing on behalf of the applicant is required to be tested on the basis of the language used in the aforesaid petition filed by the applicant under Section 9 of the Act.

10. A perusal of paragraph No.17 of the petition filed under Section 9 of the Act by the applicant would show that it has been so stated by the applicant that the dispute is required to be adjudicated and since there is a provision for arbitration, the name of an Arbitrator was proposed. A perusal of the preliminary submission No.1, as reproduced above, would show that the respondent replied by stating that although there is a provision of Arbitration and Applicable Laws as per Clause 8 of the Memorandum of Understanding signed between the parties but as per Clause 8, the dispute is to be referred to the Empowered Committee. In this way, the respondent has not admitted that the aforesaid Clause 8 will be considered as an arbitration clause and rather it was so stated in preliminary submissions of the reply that such a provision exists and it was further clarified that the dispute is to be referred to the Empowered Committee. In other words, the respondent has not stated in the reply that the matter is to be referred to the Arbitrator but rather clarified that the matter is to be referred to the Empowered Committee for DDUGKY in the Ministry of Rural Development, Government of India. In the later part of the aforesaid reply, the respondent also stated that a notice under Section 21 of the Act is to be given to the Empowered Committee for DDUGKY in the Ministry of Rural Development, Government of India. Here also the respondent has stated that the notice is to be given to the aforesaid Committee and not to any Arbitrator. Same is the position when the respondent

replied to aforesaid paragraph No.17 of the petition, as reproduced above, stating that it is correct to the extent that there is a Clause of arbitration. In this way, the respondent admitted the existence of the Clause but never admitted that the intention of the parties was to refer the matter to arbitration.

11. In the reply which was filed by the respondent under Section 9 of the Act, the admission relates only to the existence of Clause 8 but there is no such admission that the intention of the parties was to refer the matter to arbitration. Consequently, the question remains whether Clause 8 can be interpreted as an arbitration clause or not. The aforesaid Clause has already been interpreted by this Court in the aforesaid judgment in ***All India Society for Electronics and Computer Technology's case (Supra)*** on the basis of the law laid down by Hon'ble Supreme Court. Therefore, it cannot be said that the respondent has admitted that the parties have agreed to refer the matter to arbitration.

12. So far as the second argument which was raised by the learned counsel for the applicant with regard to applicability of Section 7(4)(c) of the Act is concerned, the same will also not be sustainable in view of the fact that in the proceedings under Section 9 of the Act, it is only the aforesaid Clause which has been admitted and not the intention of the parties to refer the matter to arbitration. Once the Clause itself does not provide for the matter to be referred to arbitration, then the mere fact that the heading of the Clause is "Arbitration and Applicable Laws" would not mean that there was intention of the parties to refer the matter to arbitration.

13. In view of the aforesaid facts and circumstances, the present arbitration case is liable to be dismissed and the same is accordingly dismissed.

(JASGURPREET SINGH PURI)
JUDGE

11.03.2026
Chetan Thakur

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