



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 15th OF JUNE, 2026

ARBITRATION CASE No. 11 of 2024

M/S GOPAL ENTERPRISES (PARTNERSHIP FIRM)

Versus

*THE NORTHERN COALFIELDS LIMITED (A MINIRATNA
COMPANY AND SUBSIDIARY OF COAL INDIA LIMITED)*

.....
Appearance:

*Shri Praveen Dubey and Shri Abhyuday Singh - Advocate for the
applicant.*

*Shri Greeshm Jain - Advocate with Ms.Shraddha Pandey, Shri Pankaj
Bhatt, Ms. Sana Khan - Advocates for the respondent.*

.....
ORDER

The present application under Section 11 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as 'the Act of 1996' for the sake of brevity) has been filed for appointment of Arbitrator for resolution of dispute arose between the parties arising out of an agreement dated 19.03.2021 Annexure P/1.

2. It is submitted by the counsel for the applicant that the agreement contains Clause 16 which authorizes the parties to refer the matter to the Arbitrator to resolve the dispute between the parties. It is submitted that the applicant, a partnership firm, has done certain work with the respondent-company which is a public undertaking. The dispute arose due to non-payment of certain dues for which the letters Annexure A/2 dated



10.09.2023, Annexure A/3 dated 28.12.2023, Annexure A/4 dated 28.03.2023 and Annexure A/5 dated 12.06.2023 have been issued, however, the respondent has not responded to those request letters. It is submitted that as per Clause 16 of the agreement, the parties other than the government agencies may seek redressal of the dispute through Arbitration (The Arbitration and Conciliation Act, 1996, as amended by amendment act of 2015). It is submitted that when the in-house mechanism as provided under Clause 16 has failed, the applicant has served notice in which it is categorically stated that the request made to the Engineer-Incharge and the Committee has not been responded and all efforts have been in vain, then only request under Clause 16A for appointment of Arbitrator has been made. When such requests have not been responded, the applicant was not left with any remedy except to file the present application under the Act of 1996.

3. Per contra, learned counsel for the respondent has submitted that the present application is not maintainable on the ground that the Clause of Arbitration which is a contract within the agreement is not enforceable on the parties due to non-signing of the document of bid by all the partners. It is submitted that the partnership firm is required to submit the written consent of all the partners to above arbitration clause at the time of the submission of the bid. It is submitted that as the written consent of all the partners has not been submitted at the time of the submission of the bid, therefore, the arbitration Clause is not applicable on the applicant which is a partnership firm. It is further submitted that the applicant has not availed the in-house remedy by not giving a letter to the Engineer-Incharge within 30 days from



the date of dispute and therefore, the present application is not maintainable.

4. The counsel for the respondent has also relied on the judgment passed by the Hon'ble Apex Court in the case of *Mahanadi Coalfields Ltd. vs M/S IvrcI Amr Joint Venture* [SLP(C) No 1098 of 2020 decided on 25.07.2022]. The counsel for the respondent has invited attention of this Court towards para 9 of the judgment to state that mere use of the word "arbitration" or "arbitrator" in a clause will not make the agreement an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. Relying on the said judgment, it is submitted that the agreement Annexure A/1 contains a clause 16 and 16A which provides for dispute redressal mechanism, according to which, the parties other than the government agencies may seek redressal of the dispute through Arbitration. Therefore, as the parties have consciously used word "may" which shows the intention of the parties that in case the dispute arise, then parties shall further agree upon the condition of arbitration and as such only by using word "may" the matter cannot be referred to arbitration.

5. Heard learned counsel for the parties and perused the record.

6. The two legal questions which have been raised by the respondent relate to articulation of the agreement.

7. According to the counsel for the respondent when the parties lack intention to refer the matter to the arbitration by using word "may" then it cannot be referred unless further agreement is executed to refer any dispute to the arbitration. It is also submitted that as there is a distinct and exclusive clause in the agreement that in case a partnership firm is a party to the



agreement, then the partnership firm is required to submit the written consent of all the partners to above arbitration clause **at the time of the submission of the bid** for the applicability of the same. It is submitted that such consent was not submitted by all the partners of the firm. However, the counsel for the respondent could not satisfy this Court that if such consent was not made by all the partners, then why such agreement was incorporated with the agreement and has been executed between the parties.

8. On the contrary, counsel for the applicant has submitted that the clause is in respect of consent of all the partners to bind all the partners of a firm with the clause of the agreement. The application has been submitted by the firm itself with proper authorization of all the partners, therefore, there cannot be any iota of doubt that the firm is not consented to invoke arbitration as per clause 16 and 16A of the agreement.

9. Therefore, in the considered opinion of this Court, once the respondent with an open eye has executed an agreement with the firm having the clause of arbitration, then the respondent cannot shy away with the arbitration on the ground that such consent was not given by all the partners of the firm at the time of submission of the bid. If it had been the case, the respondent was very much having power to refuse the execution of the agreement in absence of consent of all the partners but as the agreement was executed subsequent to the submission of the bid, the objection which has been raised by the counsel for the respondent is not tenable in the eye of law.

10. The second ground which has been raised by the counsel for the



respondent is that when the word "may" is used, it is always referred that parties who redress their dispute through arbitration shall further execute an agreement or give consent for matter to be decided by arbitration.

11. The Hon'ble Apex Court in the case of *Mahanadi Coalfields Ltd. (supra)* relying on the judgment of Hon'ble Apex Court in the case Jagdish Chander v. Ramesh Chander in para 9 has held as under :

9. In Jagdish Chander v. Ramesh Chander, a two-judge bench of this Court, while relying upon the earlier decisions in K. K. Modi v. K. N. Modi, 4 Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd, 5 Bihar State Mineral Development Corpn v. Encon Builders (I) (P) Ltd., 6 and State of Orissa v. Damodar Das, 7 enumerated the principles governing what constitutes an arbitration agreement. Justice R V Raveendran, speaking on behalf of the bench, held that the words used in an arbitration agreement should disclose a determination and obligation on behalf of parties to refer disputes to arbitration. This court held:

“8 (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 exclude any of the attributes of an arbitration agreement or contains anything that detracts from an arbitration agreement, it will not be 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).



12. From reading of para 9 (iv) of the judgment passed in the case of Jagdish Chander (surpa), it is clear that if only word “arbitration” or “arbitrator” in clause of arbitration is used, it will not make an arbitration agreement, **if it requires or contemplates a further or fresh consent of the parties for reference to arbitration.**

13. When the clause 16 of the agreement is read, it is found that it contains the word "may" in one paragraph by stating that in case the parties other than the government agencies, the redressal of the dispute may be sought through Arbitration (The Arbitration and Conciliation Act, 1996, as amended by amendment act of 2015) but it also contains several other clauses and paragraphs which unequivocally states that in case of dispute between the parties the matter **shall** be referred to the arbitration. Therefore, the intention of the parties, if gathered from the agreement, is clear that in case of any dispute arising out of the agreement the matter shall be referred to the arbitration as provided under the Clause.

14. The intention of the parties to enter into an arbitration agreement must be inferred from the terms of the agreement. Where the terms of an agreement clearly reveal the intention of the parties to submit their disputes to a private tribunal for resolution and to accept the decision of the tribunal as binding, the agreement constitutes an arbitration agreement. Although no particular form is required for an arbitration agreement, however, the terms used must unequivocally indicate the intention of the parties to resolve disputes through arbitration rather than merely suggesting the possibility of arbitration. Where the agreement merely contemplates the possibility of the



parties agreeing to arbitration at a future date, rather than imposing a binding obligation to refer disputes to arbitration, it does not constitute a valid and enforceable arbitration agreement. 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. A clear and direct expression of the intention of the parties to have their disputes settled by arbitration is sufficient to constitute an arbitration agreement. Therefore, in the considered opinion of this Court, the applicant has made out a case for referring the matter to arbitration.

15. With the consent of learned counsel for the parties and considering the list of empanelled Arbitrators issued by the M.P. Arbitration Centre, Jabalpur, following order is passed :

(i) Shri H. P. Singh, Former Judge, High Court of M.P. Address- Bungalow B-139, Priyadarshani Colony, Dumna Airport Road, Jabalpur-482005, Contact No.94253-25600, Email-justicehpsingh@gmail.com, who has consented in terms of Section 11(8) of the Act of 1996, is appointed as sole Arbitrator to resolve the dispute between the parties in the case.

(ii) Arbitrator shall issue the notices and fix the date and suitable venue for arbitration. Said arbitration will take place at Jabalpur.

(iii) Parties are directed to deposit necessary charges and fees as per M.P. Arbitration Center (Domestic and International) Rule, 2019.

(iv) Director of Madhya Pradesh Arbitration Centre, Domestic and International, Jabalpur (M.P.D.I.A.C.) shall communicate the decision of this Court to the Sole Arbitrator.



(v) Other provisions of Section 15(3)(4) of the Arbitration and Conciliation Act, 1996 will apply to substitute Arbitrator.

16. With aforesaid directions, the Arbitration Case is disposed of.

(DEEPAK KHOT)
JUDGE

anand