

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

**ARB-77-2023 (O&M)
Pronounced on: 23.05.2025**

Gopal Hitech Infra Developers Private Limited ...Petitioner(s)

Versus

Bhagat Singh and another ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Chetan Mittal, Senior Advocate with
Mr. Kunal Mulwani, Advocate,
Mr. Aakash Singla, Advocate,
Mr. Ritvik Garg, Advocate for the petitioner

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Saksham Mahajan, Advocate,
Ms. Shruti Singla, Advocate for the respondents

TRIBHUVAN DAHIYA, J.

The petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act') seeking appointment of sole Arbitrator at New Delhi to adjudicate the disputes and differences that have arisen between the parties.

2. The petitioner company is involved in real estate and infrastructure development works. It planned a residential project over about 50.10 acres of land at village Garhi Alawalpur, tehsil Dharuhera, district Rewari, which was owned by both the parties; 26 acres 5 kanals by the respondents, and about 9.52 acres by the petitioner; the remaining land was owned by other landowners/co-shares. A collaboration agreement was entered into between both the parties for development of the project, dated 05.11.2012, Annexure P-3. Clause 28 thereof provided for resolution of

disputes between the parties. Undisputedly, disputes and differences arose between them and the petitioner issued a legal notice, dated 05.08.2022, Annexure P-16, for invocation of arbitration under the 1996 Act. The respondents did not reply to the notice, nor did they agree to appointment of arbitrator otherwise. Their plea is that the agreement does not envisage resolution of disputes through arbitration. The wording of clause 28 is the bone of contention between the parties, as to whether it postulates settlement of disputes by way of arbitration.

3. Mr. Chetan Mittal, learned senior counsel for the petitioner, has contended that a plain reading of clause 28 makes it clear that there exists an arbitration agreement for settlement of disputes between the parties. Therefore, the respondents have no right to object to the appointment of Arbitrator; they have duly executed the agreement, and acknowledged existence of the disputes as well. Besides, the plea that invocation of arbitration is barred by limitation can also not be raised before this Court at this stage, as it is a subject matter of arbitral proceedings and can be decided by the arbitrator only. In support of the contentions, learned senior counsel has relied upon the judgments rendered by the Supreme Court in *M/s Nandan Biomatrix Limited v. D 1 Oils Limited*, 2009 (4) SCC 495, and *M/s Uttarakhand Purv Sainik Kalyan Nigam Limited v. Northern Coal Field Limited*, (2020) 2 SCC 455.

4. Mr. Sumeet Mahajan, learned senior counsel for the respondents, on the contrary, contends that there is no arbitration agreement between the parties, nor does clause 28 provide for it. The clause only stipulates that disputes between the parties are to be resolved by way of mediation, and if there is no resolution, the civil Court will have the authority to hear and

decide the same. The jurisdiction to decide the disputes, accordingly, has been vested only with the civil Court, and not with any Arbitrator. He has heavily relied on the law laid down by the Supreme Court in *Jagdish Chander v. Ramesh Chander and others*, (2007) 5 SCC 719, to contend that one of the essential ingredients of an arbitration agreement is that the private tribunal/arbitrator must be empowered to adjudicate upon the disputes between the parties. And in case the agreement provides, as herein, that the party dissatisfied with the Arbitrator's decision can go to a civil Court seeking the desired relief, it cannot be termed an arbitration agreement as the adjudication of the dispute is left to the civil Court. It is also contended that the law laid down in *Jagdish Chander* case (*supra*) has been consistently followed by the Supreme Court. Lastly, learned senior counsel has contended that invocation of arbitration itself is time-barred, which will disentitle the petitioner to file the instant petition.

5. Submissions made by learned counsel for the parties have been considered.

6. It is well settled as held in *M/s Nandan Biomatrix Limited* case (*supra*) that in exercise of power under Section 11 of the 1996 Act, the Court is only required to ascertain whether there is an arbitration agreement in existence as defined under the Act. The observations are as follows:

19. The Court is required, therefore, to decide whether the existence of an agreement to refer the dispute to arbitration can be clearly ascertained in the facts and circumstances of the case. This, in turn, may depend upon the intention of the parties to be gathered from the correspondence exchanged between the parties, the agreement in question and the surrounding circumstances. What is required is to gather the intention of the parties as to whether they have agreed for resolution of the

disputes through arbitration. What is required to be decided in an application on Section 11 of the 1996 Act is: whether there is an arbitration agreement as defined in the said Act.

6.1. To appreciate the controversy and decide whether there exists an arbitration agreement, it is apt to refer to clause 28 of the agreement. The agreement is in Hindi, and the clause reads as under:

28. यह कि दोनों पक्षों के बीच यदि कोई विवाद होगा तो उसका निपटारा सालिस / Arbitrator करेगा। सालिस / Arbitrator यह व्यक्ति होगा जो दोनों पक्षों द्वारा नियुक्त होगा तथा सालिस / Arbitrator से विवाद ना निपटने की स्थिति में गुड़गांवा कोर्ट को वाद को सुनने व तय करने का अधिकार होगा।

Mr. Mahajan has premised his arguments by reading the word 'निपटारा' to mean 'resolution' [as translated by the respondent in the written statement as well] and according to him the clause postulates the parties intend to 'resolve' their disputes by mediation which is not adjudication; and specifically, the power to decide/adjudicate has been left only with the civil Court at Gurgaon. However, according to 'Oxford Hindi-English Dictionary' 23rd Edition, 2005, the word 'निपटारा' means 'settlement or decision'. Hence, translated in English clause 28 it will read, '*that in case there is any dispute between both the parties its settlement/decision will be by Arbitrator. Arbitrator will be a person appointed by both the parties and in the event of Arbitrator failing to settle/decide the dispute Gurgaon Court will have the jurisdiction to hear and decide the suit/litigation*'. A perusal of the clause makes it apparent that the parties have agreed if there is any dispute between them, its settlement/decision is to be by an Arbitrator to be appointed by both of them. And only in the event of Arbitrator being unable to settle/decide the dispute, the Court at Gurgaon will have jurisdiction to hear and decide the same. The plain words of the clause leave no room for any other interpretation. Thus, the

parties have unambiguously decided to refer the disputes between them to arbitration.

6.2. In the light of what has been discussed above, the arguments advanced by Mr. Mahajan do not cut much ice. His reliance upon the following observations in *Jagdish Chander* case (*supra*) is also flawed;

8. ... (T)his 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) xxx xxx

(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

with the decision of the Arbitrator, that party will have the option to file a civil suit. The argument accordingly is misconceived and stands rejected. Additionally, it cannot be said that any of the attributes or elements of an arbitration agreement, as laid down in *Jagdish Chander* case, are missing or excluded in the clause; rather, as laid down in the judgment 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*'. And as already discussed hereinbefore, intent of the parties to settle the disputes by way of arbitration is explicit in clause 28 of the agreement which obviates the necessity to set out all the attributes of an arbitration agreement therein.

7. As settled by *M/s Uttarakhand Purv Sainik Kalyan Nigam Limited* case, the issue of limitation being a jurisdictional issue, is to be decided by the Arbitrator and the respondents will be at liberty to raise it before him.

8. In view of the discussion, the petition is allowed, and Mr. Justice (Retd.) Adarsh Kumar Goel, formerly a Judge of the Supreme Court of India, resident of C-2/24, Safdarjung Development Area, New Delhi-114016, Mobile No.9910213040, is appointed as Arbitrator to adjudicate the disputes which have arisen between the parties. It goes without saying that it will be open for the respondents to raise the plea of limitation before him. Learned Arbitrator shall make sincere efforts to complete the arbitral proceedings as per provisions of the 1996 Act.

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

10. A request letter along with a copy of the order be sent to Mr. Justice (Retd.) Adarsh Kumar Goel.

11. Pending miscellaneous application(s), if any, also stand(s) disposed of.

**(TRIBHUVAN DAHIYA)
JUDGE**

23.05.2025

Payal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No