282

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ARB-758-2025(O&M)
Date of Decision: 09.04.2026

M/S REALSTA INFRATECH PVT LTD

....Petitioner(s)

Versus

M/S PACE STOCK BROKING SERVICES PVT LTD

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Chandandeep Singh, Advocate, for the petitioner.

Mr. Vishal Sodhi, Advocate and
Mr. Sourav Garg, Advocate, for the respondent.

****

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') seeking appointment of an Arbitrator to adjudicate upon the disputes between the parties.

2. Learned counsel appearing on behalf of the petitioner submitted that an agreement was entered into between the petitioner and the respondent, which has been attached with the present petition as Annexure P-2 dated 12.05.2023, which is in the nature of Leave and License Agreement and in the aforesaid agreement, there is a clause pertaining to dispute resolution contained in Article 9 and as per Clause 9.1, it is provided that when there is a difference or dispute arising from or pertaining to the

agreement, then the same shall be settled amicably by negotiation between the parties within 15 working days of receipt of a written notice by either party to the other party. In the event of such dispute not being resolved amicably within the aforesaid period or the extended period, then the party raising such dispute may refer the dispute for resolution by arbitration. The Arbitrator shall be appointed by the first and second party jointly and arbitral proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, as amended from time to time. The seat of the arbitration has also been designated as Gurugram and the language of the arbitration proceedings shall be English. It is further provided that the arbitral award shall be final and binding upon the parties.

3. Learned counsel submitted that in view of the aforesaid clause pertaining to dispute resolution, the petitioner raised a dispute and a legal notice was issued by the petitioner vide Annexure P-3 dated 27.08.2025 by way of speed post for settlement of the dispute and rather it was mentioned in paragraph No.10 of the said notice that earlier also, multiple reminders were sent but the respondent failed to respond or engage in any meaningful communication and refused to make the payments.

4. Learnd counsel further submitted that thereafter, the petitioner in accordance with the aforesaid Clause 9.1, issued a notice under Section 21 of the Act dated 06.10.2025 for invoking the arbitration clause vide Annexure P-4 and also proposed the name of an Arbitrator and sought consent from the respondent. However, no reply was received from the respondent. He submitted that since the resolution mechanism for appointment of an Arbitrator as stated in the aforesaid clause had failed, the

petitioner has therefore filed the present petition under Section 11 of the Act seeking appointment of an independent Sole Arbitrator by this Court.

5. On the other hand, learned counsel appearing on behalf of the respondent submitted that there is neither any dispute with regard to existence of the agreement between the parties vide Annexure P-2 nor is there any dispute with regard to existence of the aforesaid clause pertaining to dispute resolution nor is there any dispute with regard to the issuance of notice under Section 21 of the Act by the petitioner to the respondent vide Annexure P-4. He submitted that however the objection of the respondent is that in the aforesaid clause pertaining to dispute resolution i.e. Clause 9.1, there is no intention of the parties to refer the matter to arbitration in the event of any dispute arises. He further submitted that the aforesaid clause cannot be termed as an arbitration clause and since no arbitration clause exists, the present petition filed under Section 11(6) of the Act for the appointment of an Arbitrator is liable to be dismissed.

6. Learned counsel for the respondent in support of his contention has referred to a judgment of Hon'ble Supreme Court in ***BGM and M-RPL-JMCT (JV) vs. Eastern Coalfield Limited, 2025 SCC OnLine SC 1471*** and submitted that Hon'ble Supreme Court while referring to its earlier judgments has observed that when the expression “may” is used, there is a discretion with the parties to agree in future as to whether the matter is to be referred to arbitration or not and therefore, in this way, so far as Clause 9.1 in the present case is concerned, the same does not provide that the parties have agreed to refer the dispute to arbitration and the aforesaid clause only provides that any of the parties may refer the dispute for resolution by arbitration. He submitted that after the aforesaid agreement was executed

between the parties, there was no subsequent agreement between the parties for deciding that the matter is to be referred to arbitration in case a dispute arises between the parties and in the absence of any subsequent agreement or meeting of minds between the parties for referring the dispute to arbitration, no Arbitrator can be appointed purely on the basis of existence of the aforesaid Clause 9.1 and therefore, the present petition is liable to be dismissed.

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

8. The existence of the agreement (Annexure P-2) between the parties is not in dispute. The existence of Clause 9.1 in the aforesaid agreement is also not in dispute. The invocation of the aforesaid clause by the petitioner by issuance of a notice under Section 21 of the Act vide Annexure P-4 is also not in dispute. Rather, it is an admitted position that the agreement between the parties contains the aforesaid Clause 9.1 and the invocation thereof under Section 21 of the Act has not been disputed by the learned counsel for the respondent.

9. The issue involved in the present case is not as to whether the aforesaid Clause 9.1 is in existence or not but the issue is as to whether the aforesaid clause can be termed to be such a clause whereby the parties have agreed that the matter be referred to arbitration or not. In other words, the issue involved in the present case is as to whether there is any arbitration clause in existence or not. Therefore, before proceeding further, it will be relevant to reproduce the aforesaid clause as follows:

> ***<u>"ARTICLE 9</u>***
>
> ***DISPUTE RESOLUTION***
>
> *9.1 In event of any difference or dispute arising from or pertaining to this Agreement shall be endeavored to be settled*

amicably by negotiation between the parties within 15 (Fifteen) working days of receipt of written notice by either Party to the other Party. That in the event of such dispute not being resolved amicably within the above referred period or such extended period agreed for; the party raising such dispute may refer the dispute for resolution by Arbitration. The Arbitrator shall be appointed by the First and Second Party jointly and Arbitral Proceedings shall be conducted in accordance with Arbitration and Conciliation Act, 1996 as amended from time to time. The seat of Arbitration shall be at Gurugram, and the language of the Arbitration proceedings shall be English. The Arbitral award shall be final and binding upon the Parties."

10. A plain reading of the aforesaid clause would show that it has been so provided that when any difference or dispute arises between the parties pertaining to the agreement, then an endeavour shall be made to settle the dispute amicably and in default of the same, the party raising such dispute may refer the dispute for resolution by arbitration. So far as the first part is concerned, the petitioner had issued a legal notice (Annexure P-3) thereby raising a dispute and initiating the prescribed pre-arbitration mechanism but the respondent failed to respond to the said legal notice and thereafter, the petitioner issued another notice vide Annexure P-4 under Section 21 of the Act invoking the arbitration clause but no reply was filed by the respondent to the aforesaid notice.

11. During the course of arguments, learned counsel for the respondent referred to a judgment of Hon'ble Supreme Court in ***BGM and M-RPL-JMCT (JV) (Supra).*** The said judgment is required to be considered in the present case to determine as to whether the language used in the aforesaid Clause 9.1, as reproduced above, is sufficient to gather the

intention of the parties therefrom. Hon'ble Supreme Court in the aforesaid judgment in ***BGM and M-RPL-JMCT (JV) (Supra)*** was dealing with a clause pertaining to settlement of dispute between the parties, which was contained in Clause 13 thereof. The said clause also provided for a pre-arbitral dispute mechanism for amicable settlement between the parties and in default of the same, it was so provided that in case of parties other than Govt. Agencies, the redressal of the dispute may be sought through the Arbitration and Conciliation Act, 1996, as amended by the Amendment Act of 2015. The rival contentions of both the parties in the said judgment were also similar to those in the present case. Hon'ble Supreme Court interpreted the aforesaid clause and came to the conclusion that since the expression used in the aforesaid Clause 13 of that case was that the redressal of the dispute 'may be sought' through Arbitration and Conciliation Act/arbitration, which would mean that resort to arbitration was required to be done subsequently in future, in case the parties agreed to do so. There being no separate agreement between the parties reflecting meeting of minds or intention to arbitrate, the Court therefore held that from the aforesaid expression i.e. “may be sought” through arbitration cannot be termed as a valid arbitration clause providing for the arbitration process. In other words, the aforesaid clause was interpreted to mean that the same was not an arbitration clause at that stage and that in future, there had to be meeting of minds or intention to arbitrate for the purpose of referring the matter to arbitration. Reference was also made to earlier judgments of Hon'ble Supreme Court. The relevant paragraphs of the aforesaid judgment in ***BGM and M-RPL-JMCT (JV) (Supra)*** are 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?

xxxx xxxx xxxx

"*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) <u>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.</u> 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)

xxxx xxxx xxxx

12. The ratio which can be culled out from the aforesaid judgment in ***BGM and M-RPL-JMCT (JV) (Supra)*** is based upon the issues which were framed in paragraph No.13 thereof, as reproduced above. So far as the first issue framed therein as to whether the question of existence of an arbitration agreement should be left for the arbitral tribunal to decide is concerned, Hon'ble Supreme Court made reference to the earlier Seven-Judge Constitution Bench judgment in ***Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act, 1996 and the Stamp Act, 1899, In re, (2024) 6 SCC 1*** in which it was held that at the stage of reference under Section 11 of the Act, the Court only has to see *prima facie* existence of an arbitration clause and the Referral Court is not to see the validity of the clause and therefore there is a difference between the scope of Section 8 and Section 11 of the Act. In other words, the law laid down by the Seven-Judge Constitution Bench in ***Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act, 1996 (supra)*** is that at the reference stage, the Referral Court is not to conduct a mini trial or to go into the merits of the case but has to only see the *prima facie* existence of an arbitration clause. Nothing more, nothing less. Hon'ble

Supreme Court in ***BGM and M-RPL-JMCT (JV) (Supra)*** also made reference to its earlier judgment in ***Jagdish Chander vs. Ramesh Chand and others, (2007) 5 SCC 719*** and also summarised the same in paragraph No.22 as reproduced above. On the basis of the said earlier judgment in ***Jagdish Chander's case (supra),*** it was observed that the expression "may be sought" would mean that there is no subsisting agreement between the parties that they or any one of them would seek settlement of dispute through arbitration because it was just an enabling clause whereunder the parties agreed that they could resolve their dispute through arbitration and therefore, the phraseology of Clause 13 in ***BGM's case*** was not indicative of a binding arbitration clause that any of the parties on its own could seek redressal of *inter se* dispute through arbitration.

13. The arbitration clause of the present case and the clause which was the subject matter of the aforesaid judgment in ***BGM's case (supra)*** are not identical in nature and the language used in the clauses is also different. In the clause which was the subject matter of ***BGM's case (supra),*** the expression which was used was 'may be sought through arbitration' when the amicable settlement was not possible, whereas in the present case, the aforesaid expression has not been used. In the present case, the expression used in the clause from where the intention of the parties can be gathered is that when the amicable settlement by negotiation had failed, the party who had raised the dispute may refer the dispute for resolution by arbitration. Therefore, there is a marked distinction between the clause which was the subject matter of the aforesaid judgment in ***BGM's case (supra)*** and the clause in the present case and it would not be inappropriate to observe that not only is the language of both the clauses different but even the intention

of the parties appears to be different in both the clauses. A complete perusal of Clause 9.1 of the present case, as reproduced above, would show that not only does it provide that after the amicable settlement by negotiation has failed, a party may refer the dispute for resolution by arbitration but it further provides that the Arbitrator shall be appointed by the first and second party jointly and that arbitral proceedings shall be conducted in accordance with the Arbitraton and Conciliation Act, 1996. The seat of the arbitration has also been fixed at Gurugram, the language of the arbitration proceedings shall be English and the arbitral award shall be final and binding upon the parties.

14. For the purpose of ascertaining as to whether the parties have agreed by way of the aforesaid Clause 9.1 to refer the dispute to arbitration in the event a dispute arises or whether it would mean that they may in future decide as to whether the matter is to be referred to arbitration or not, the same can be ascertained on the basis of relevant factors. The prime and foremost factor, which can be considered as a litmus test, would be as to what is the intention of the parties on a bare reading of the aforesaid clause. The intention of the parties can always be gathered from the bare language used in the clause. In the clause wherein the expression “may be sought' was used in the aforesaid judgment of Hon'ble Supreme Court ***BGM and M-RPL-JMCT (JV) (Supra)***, it clearly suggests that the parties are yet to decide among themselves as to whether the matter is to be referred to an Arbitrator or not, or whether the arbitral proceedings should be resorted to or not. However, the expression “may be referred to arbitration” used in the present clause must be read in the context of the clause as a whole and therefore, it does not suggest or leave it for the parties to further decide as

to whether the dispute is to be referred to arbitration or not. The intention of the parties can be further gathered from the second part of the aforesaid clause, whereby it specifically provides that the Arbitrator shall be appointed by the first and second party jointly and the arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 and even the seat of the arbitration and the language of the arbitration proceedings have also been provided. In the last line of the aforesaid clause, it is so provided that the arbitral award shall be final and binding upon the parties. In this way, it appears that a continuity has been maintained for two stages and the clause as a whole manifests an intention to arbitrate. In the first part, the parties are to amicably resolve the dispute by way of negotiation and in case this is not done, then the party raising a dispute may refer the dispute for resolution by arbitration and thereafter in the second part, the procedure and seat of arbitration have been prescribed. The aforesaid continuity in two phases itself clearly suggests the intention of the parties that in default of settlement through amicable negotiation, the parties may refer the dispute for resolution through arbitration. Therefore, this Court is of the considered view that the facts and circumstances of the present case and the clause is question are totally distinguishable from the clause which was the subject matter of the aforesaid judgment of Hon'ble Supreme Court in ***BGM and M-RPL-JMCT (JV) (Supra).***

15. The Hon'ble Supreme Court in ***Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act, 1996 (supra)*** laid down the law with regard to the scope of Section 11 of the Act at the reference stage. It is the *prima facie* existence of the arbitration clause which is the factor which is to be seen at the time of making a reference. Therefore,

this Court would only see *prima facie* existence of the arbitration clause and nothing else. There is a fine distinction between validity of a clause and *prima facie* existence of a clause. If the Court is satisfied at the reference stage that there is a *prima facie* existence of an arbitration clause, then the matter is to be referred to the Arbitrator. The purpose of Section 11 of the Act is only to trigger the arbitration proceedings and the appointment of an Arbitrator would not mean that either of the parties cannot raise a dispute with regard to the existence or the validity of the clause before the learned Arbitrator because after an order is passed by the Referral Court under Section 11 of the Act, which is meant for triggering the arbitral proceedings, the Court becomes *functus officio* and thereafter the entire aspect including the aspect of validity of the arbitration agreement becomes the subject matter of the Arbitral Tribunal.

16. Reference can also be made to a judgment of Delhi High Court in ***Dharampal Satyapal Limited vs. Niche Builders and Contractors Private Limited***, ***ARB.P. 1880/2025, O.M.P.(I) (COMM.) 383/2025 & I.A. 612/2026,*** *decided on 28.01.2026* in which a similar kind of clause was inserted and an Arbitrator was appointed. Similarly, in ***Glocal Thinkers Pvt. Ltd. vs. Instrumentation Automation Surveillance Communication Sector Skill Council, ARB.P.2132/2024 and I.A.49580/2024,*** decided on 05.12.2025, a similar clause was inserted and an Arbitrator was appointed.

17. During the course of arguments, learned counsel for the respondent has referred to a judgment of Bombay High Court in ***Quick Heal Technologies Limited vs. NCS Computech Private Limited, 2020 SCC Online Bom 687*** and submitted that there was a similar clause in the

aforesaid judgment as well but the Hon'ble Court did not appoint an Arbitrator because of the aforesaid reason.

18. This Court is of the considered view that in paragraph No.2.3 of the aforesaid judgment, the clause was reproduced and a perusal of the same would show that although in Clause 17(a), it was so provided that all disputes under the agreement shall be amicably discussed for resolution and if such dispute cannot be resolved within 30 days, the same may be referred to arbitration. However, at the same time, there is another clause i.e. Clause 17(b) which so provides that disputes under the agreement shall be referred to arbitration as per the Arbitration and Conciliation Act and therefore, the aforesaid Clause 17 cannot be said to be in *pari materia* with the clause of the present case and therefore, the aforesaid judgment is distinguishable.

19. Learned counsel for the respondent also referred to a judgment of Madras High Court in ***M.Arumugam vs. M/s. CP Foods, Arbitration O.P (Com.Div.) No.142 of 2025, decided on 22.09.2025*** and the clause referred to in paragraph 7 thereof was according to the learned counsel for the respondent also similar to the clause in the present case. However, this Court is of the considered view that this Court will be guided by the Seven-Judge Constitution Bench judgment in ***Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act, 1996 (supra)*** and also judgment of the Hon'ble Supreme Court in ***SBI General Insurance Co.Ltd. Versus Krish Spinning, 2024 SCC Online SC 1754*** and the clause in the aforesaid judgment of Madras High Court is different from the clause in the present case and therefore that case is also distinguishable.

20. In view of the aforesaid facts and circumstances, this Court is of the considered view that there is a *prima facie* existence of an arbitration

clause and the same has been invoked by issuance of a notice under Section 21 of the Act. Therefore, the present petition deserves to be allowed.

21. Consequently, the present petition is allowed. Hon'ble Mr. Justice Talwant Singh, a former Judge of Delhi High Court, Resident of X-19,GF, HauzKhas, Near NIFT Campus, New Delhi, Office Address: Kothi No. 199, Sector 11A, Chandigarh, Mobile No.9910384653, Email ID: mail@talwantsingh.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.

22. 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.

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

24. Learned Arbitrator is also requested to complete the proceedings as per the time limit prescribed under Section 29-A of the Act.

25. A request letter alongwith a copy of the order be sent to Hon'ble Mr. Justice Talwant Singh, a former Judge of Delhi High Court.

09.04.2026 **(JASGURPREET SINGH PURI)**

rakesh **JUDGE**

Whether speaking : Yes/No

Whether reportable : Yes/No