THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

ARBITRATION APPLICATION No.143 of 2025
(CNR No. HBHC010393582025)

DATE OF ORDER: 01.10.2026

Reserved on: 18.09.2026

Pronounced on : 01.10.2026
Uploaded on : 01.10.2026

BETWEEN:

Sulam Srinivas Yadav and Two Others

.....Applicants

AND

Syncs Enterprises Private Limited and
Two Others

... Respondents

Mr. M.P. Kashyap, learned counsel appearing for the applicants.

Mr. Kakara Venkata Rao, learned counsel appearing for the respondents.

ORDER: *(per Hon'ble Justice Moushumi Bhattacharya)*

1. The applicants seek appointment of an Arbitrator on the basis of a Development Agreement-cum-Irrevocable General Power of Attorney (DAGPA) dated 11.05.2020.

2. All the parties to the present Arbitration Application were parties to the said DAGPA. The applicants and the respondent Nos.2 and 3 were parties to the First Part and the respondent No.1 to the Second Part to the said DAGPA.

3. The main contention before this Court is whether Clause 32 of the DAGPA amounts to an arbitration agreement which the applicants assert. The respondent No.1 objects the clause being an arbitration agreement.

4. Learned counsel appearing for the applicants submits that the existence of the arbitration agreement would be evident from the intention of the parties to arbitrate their disputes and differences before a Sole Arbitrator. Counsel also submits that the Arbitration Agreement can be gathered from the underlying agreement and does not require the use of specific words and phrases. Counsel further submits that the objection raised on behalf of the respondent No.1 runs contrary to the settled law on the subject: a valid Arbitration Agreement.

5. Learned counsel appearing for the respondent No.1 submits that the very wording of the arbitration agreement would show that it lacks the basic ingredient of the parties intending to be bound by the arbitration agreement. He further submits that Clause 32 of the DAGPA does not contain a clear, unequivocal mutual agreement between the parties to refer disputes or differences arising out of or in connection with the said DAGPA to arbitration. Counsel submits that absence of a

consensus between the parties to refer their disputes to arbitration would amount to negation of the existence of the Arbitration Agreement.

6. I have considered the submissions made on behalf of the Parties and the case law cited in support of their respective submissions.

7. The issue for consideration is whether Clause 32 of the DAGPA dated 11.05.2020 amounts to an Arbitration Agreement, as understood under section 7 of The Arbitration and Conciliation Act, 1996 ('A&C Act'). Clause 32 is set out below.

> '32. Arbitration: An experienced and qualified mutually agreed person shall be appointed as Arbitrator and he will be paid the fee as decided by them. The decision of the arbitrator is final and binding on both the parties.'

8. None of the clauses preceding Clause 32 refer to any dispute resolution mechanism or mode of settlement of disputes before reference to the Arbitration Clause i.e., Clause 32.

9. Clause 32 only refers to the person who shall be appointed as Arbitrator and that the decision of the Arbitrator shall be final and binding on both the Parties.

10. Section 7(1) of the A&C Act, 1996, defines an 'Arbitration Agreement' under Chapter-II of Part-I of the Act to mean an agreement by the parties to submit to arbitration, all or certain disputes which have arisen or which may arise between the parties in respect of a defined legal relationship, whether contractual or not. Section 7(2) to (4) clarifies the nature and form of an Arbitration Agreement, which includes an Arbitration Agreement in writing contained in a document signed by the parties, an exchange of letters and other communications including through electronic means or 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. Section 7(5) provides that the reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

11. At this juncture, it would be helpful to refer to the cases cited on behalf of the parties.

Applicants' Cases:

12. In *Lion Rubber Industries Private Limited v. Santec Exim Private Limited*[1], a Single Bench of the Bombay High Court rejected the respondents' objection holding that an arbitration agreement does not become invalid merely because it lacks certain details, provided that the commercial meaning of its terms can be reasonably understood. The said Agreement was part of the terms of the Purchase Order by way of which the parties had entered into a commercial arrangement. The Bombay High Court relied on *Babanrao Rajaram Pund v. Samarth Builders & Developers*[2] to hold that it is not compulsory for the agreement to disclose the intention of the parties to arbitrate if the intention of the parties can be gleaned from the words used by the parties when read with the underlying contract.

13. A similar objection was raised before the Bombay High Court in *Shri Sai Trading Company v. Sangali Miran and Kupwad*[3], where a learned Single Judge opined that the arbitration agreement not specifying the disputes between the parties which are to be referred to arbitration would not be fatal

[1] 2026:BHC-OS:19813
[2] (2022) 9 SCC 691
[3] 2010 BHC 14731

to the Arbitration Agreement. In *Shri Sai Trading Company* (supra), the Arbitration Agreement was contained in two Clauses of the Agreement as set out below:

> '15. In case of any dispute the same shall be referred to the Commissioner of the Corporation and his decision shall be final and binding on the agent. The appeal in respect of any decision of the Commissioner lies to the Government of Maharashtra (Urban Development). However the agent shall within a period of 30 days from receipt of decision by the Commissioner shall indicate his intention to refer the dispute to the Government of Maharashtra (Urban Development).
>
> 16. This agreement will be governed by the provisions of Arbitration and Conciliation Act, 1996.'

14. Hence, it is evident that Clause 15 spoke of a dispute between the parties being referred to the concerned authority including an Appeal from the decision arrived at by the said authority.

15. *Babanrao Rajaram Pund* (supra) considered an Arbitration Agreement contained in Clause 18 of a Development Agreement. The Arbitration Clause is set out below:

> '18. All the disputes or differences arising between the parties hereto as to the interpretation of this Agreement or any covenants or conditions thereof or as to the rights, duties, or liabilities of any part hereunder or as to any act, matter, or thing arising out of or relating to or under this Agreement (even though the Agreement may have been terminated), the same shall be referred to arbitration of a Sole Arbitrator mutually appointed, failing which, two Arbitrators, one to be appointed by each party to dispute or difference and these two Arbitrators will appoint a third Arbitrator and the Arbitration shall be governed by the

> Arbitration and Conciliation Act, 1996 or any reenactment thereof."

16. The Supreme Court found that Clause 18 clearly disclosed the intention and obligation of the parties to be bound by the decision of the Tribunal even though the words 'final and binding' were not expressly incorporated in the said Clause. The Supreme Court further opined that the intention to refer the disputes to Arbitration could be ascertained from the other parts of the Arbitration Agreement. The Supreme Court relied on the three-Judge Bench decision in *Enercon (India) Ltd. v. Enercon GmbH*[4] where the Arbitration Clause did not provide for the method of electing the third Arbitrator. The Supreme Court in *Enercon (India) Ltd.* (supra) held that the Court ought to adopt the attitude of a reasonable business person having business common sense and equipped with the knowledge that may be peculiar to the business venture. The Supreme Court discouraged construing an Arbitration Clause with a legalistic mindset.

17. The applicants have relied on the above decisions in support of their contention that Clause 32 of the DAGPA constitutes an arbitration agreement. However, it should be

[4] (2014) 5 SCC 1

borne in mind that the decision of the Court would turn on the particular arbitration agreement before the Court in cases where the existence of the Arbitration Clause is being questioned. Therefore, it is important to look at the individual words of the arbitration agreement before the Court with due regard to the necessary components of an Arbitration Agreement as defined in section 7(1) of the A&C Act.

18. In *K.K. Modi v. K.N. Modi*[5], the Supreme Court laid down the indicative factors for determining the existence of an Arbitration Agreement,

(i) The arbitration agreement must contemplate that the decision of the Tribunal will be binding on the parties to the Agreement;

(ii) 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;

(iii) The agreement must contemplate that substantive rights of parties will be determined by the agreed Tribunal;

(iv) 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;

(v) 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; and

[5] (1998) 3 SCC 573

(vi) 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.

19. *Jagdish Chander v. Ramesh Chander*[6] enumerated the elements (a) the Agreement should be in writing, (b) the parties should have agreed to refer any dispute (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 and (d) the parties should have agreed that the decision of the private Tribunal in respect of the disputes will be binding on them.

20. The Supreme Court in *Jagdish* Chander(supra), while setting out well-settled principles of the essential elements of a valid Arbitration Agreement, highlighted that the intention of the parties to enter into an Arbitration Agreement must be gathered from the terms of the Agreement. In order to be a valid arbitration agreement, the terms should reflect the parties' willingness to be bound by the decision of the Tribunal on the dispute referred. The Supreme Court further held that while there is no specific form for an arbitration agreement to be held

[6] (2007) 5 SCC 719

to be valid, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration.

21. *Jagdish Chander* (supra) has been relied upon in several cases for the proposition that the absence of words such as 'arbitration' and 'Arbitral Tribunal' would not detract from the clause being an Arbitration Agreement if the clause otherwise has the attributes or elements of an Arbitration Agreement.

Respondents' Cases

22. The Supreme Court in *M/s. Alchemist Hospitals Ltd. v. M/s. ICT Health Technology Services India Pvt. Ltd.*[7] dealt with an Arbitration Clause contained in Clause 8.28 of the Agreement, which is extracted below:

> c. Clause 8.28 of the Agreement which forms the focal point of this lis is reproduced as follows:
>
> "8.28 – Arbitration
>
> The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives, who have authority to settle the controversy and who are at a higher level of management, than the persons with direct responsibility for administration of this Agreement.

[7] AIR 2025 SC 5467

> If the matter is not resolved by negotiation pursuant to paragraph above, then the matter will proceed to mediation as set forth below:
>
> Any dispute, controversy or claim arising out of or relating in any way to the Agreement/the relationship, including without limitation, any dispute concerning the construction, validity, Agreement HINAI software interpretation, enforceability or breach of the Agreement, shall be resolved by arbitration through senior management comprising respective Chairmen of the two parties (Arbitrators). Should the dispute not be resolved within fifteen (15) days after arbitration, the complaining party shall seek remedies through the courts of law. The demand for arbitration should be made within a reasonable time (maximum 60 days) after the dispute or matter in question has arisen."

23. The Supreme Court concluded that there was no arbitration agreement and that subsequent correspondence between the parties would not displace the original intention.

24. A learned Single Judge of the Delhi High Court in *Green Power International Pvt. Ltd. v. Managing Director, Nayati Health Care and Research Pv.t Ltd.*[8] found that the facts did not disclose an arbitration agreement. The learned Single Judge relied on *Jagdish Chander* (supra) and *K.K. Modi* (supra) to arrive at the said decision.

25. The cases discussed above would show that detailed arbitration agreements may fail to meet the requisite benchmark while one-line arbitration agreements may occasionally pass

[8] Arb. P. No.1197 of 2021, dated 04.04.2022

muster. The underlying requirement is that there must be an unequivocal intention of the parties to refer all or certain disputes to arbitration before a private forum. The disputes must arise out of a defined legal relationship, which must be in the form of an Agreement in writing, and the Arbitration Agreement must form a part of the same. The agreement of the parties to refer the disputes to the decision of the Tribunal must be intended to be enforceable in law.

26. A perusal of Clause 32 of the DAGPA shows that there is no indication of the parties agreeing to refer certain or all disputes arising out of the DAGPA to the Arbitration. No nexus can be gleaned from Clause 32 of the parties agreeing to substantive rights arising out of the DAGPA being determined by the Arbitral Tribunal. Clause 32 also does not mention the law or any particular statute which would be applicable for deciding the disputes. In essence, Clause 32 dwells more on the Arbitrator (as to his experience and qualification) and the fee to be paid to the Arbitrator, than clearly articulating the parties' intention to refer the disputes arising out of the DAGPA to arbitration.

27. As stated above, none of the other clauses in the DAGPA provides for a background to Clause 32 in terms of mentioning the disputes which may arise out of the DAGPA to be adjudicated by an Arbitrator at a future point of time. Clause 32 also does not refer to the mode of appointment of Arbitrator or the seat of arbitration including prescribed timeframes for completing certain stages in the dispute resolution process.

28. Hence, this Court is of the considered view that Clause 32 of the DAGPA dated 11.05.2020 does not constitute a valid Arbitration Agreement as understood under section 7 of the A&C Act. Without an arbitration agreement being in place, there is no scope for appointment of an Arbitrator. Therefore, the Arbitration Application is devoid of merit and is liable to be dismissed.

29. A.A.No.143 of 2025, along with all connected applications, is accordingly dismissed. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

Date: 01.10.2026.
TJMR