



1

AC-90-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 17th OF JUNE, 2026

ARBITRATION CASE No. 90 of 2024

*M/S JVS FOODS PVT. LTD. COMPANY INCORPORATED UNDER
COMPAINIES ACT 2013*

Versus

*M.P. STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION
LTD.*

.....
Appearance:

Ms Astha Nagori - Advocate for the applicant (Through VC)

Shri Arjun Bajpai - Advocate for the respondent.
.....

ORDER

The present application has been filed by the applicant under Section 11(6) of the Arbitration and Conciliation Act, 1996 (Hereinafter referred to as 'the Act of 1996' for the sake of brevity) for appointment of Arbitrator to resolve the dispute arose between the parties pursuant to an agreement dated 27.11.2012 (Annexure A/3).

2. It is submitted that as per the arbitration clause, in case the dispute arises between the parties in relation to the validity, implementation and alleged breach of the agreement, the parties shall attempt in the first instance to resolve such dispute through negotiation within forty five days and thereafter may refer the dispute for resolution to the sole arbitrator. It is submitted that the dispute arose as the non-applicant wanted to exit from the share holding agreement, which contains that the party exiting from the



agreement, the equity share holding of the party exiting shall be purchased by the other parties of the agreement. It is submitted that in the said regard, there was some dispute in regard to the valuation of the share, therefore, the applicant had tried to resolve the dispute by invoking the clause of arbitration for amicably settling the matter, but of no avail. Therefore, finally a notice dated 22.05.2024 (Annexure P/5) invoking arbitration was issued. The non-applicant has replied the notice vide reply dated 11.06.2024-Annexure A/6 on the ground that the parties are at negotiation as the clause of arbitration is optional, therefore, the arbitrator cannot be appointed. Therefore, the applicant was not left with any option but to knock the doors of this Court for appointment of an Arbitrator under Section 11(6) of the Act of 1996.

3. *Per Contra*, counsel for the non-applicant submits that the reply has been submitted and objection has been raised in regard to appointment of an arbitrator on the ground that the arbitration clause contains the word 'may' to refer the matter to the arbitrator. Therefore, the intention of the parties are paramount to relegate the matter to the arbitration, which, according to him, is not available in the arbitration clause. The non-applicants are not willing to opt for arbitration, therefore, they cannot be forced to have arbitration as a mode to settle dispute. As per the arbitration clause, it does not contain the mandatory relegation of the dispute to the arbitration.

4. It is submitted by the learned counsel for the applicant that in a similar set of facts with the different applicants but with the same non-applicant, the matter was relegated for arbitration. The applicant has relied on



the order dated 07.05.2022 passed by this Court in AC No. 98/2021-
M/s Murliwala Agrotech Pvt. Ltd. and others vs. Madhya Pradesh State Agro Industries to state that in the similar set of facts another applicant has filed an application on the basis of same set of agreement against the same non-applicant, which was allowed and the arbitrator was appointed. The matter travelled up to the Hon'ble Apex Court and the same has been affirmed vide order dated 07.11.2022 passed in SLP (C) No. 20129/2022.

5. It is further contended that the Hon'ble Apex Court in the case of **Tarun Dhameja vs. Sunil Dhameja & anr. - Civil Appeal No. 14005/2024** decided on 06.12.2024 has held that even if the arbitration is optional then also the parties deserve to be relegated to the arbitration.

6. It is further submitted that against the same non-applicant in a writ petition i.e. WP No. 20050/2022 filed by another applicant, who was not party to the share holders agreement, in para-6 of the order, the non-applicants themselves have taken objection on the maintainability of the writ petition on the ground of having alternative remedy of arbitration. However, the writ petition was dismissed on the ground that the petitioner therein was not party to the share holders agreement, therefore, agreement was not enforceable between the parties, but the fact remains that the non-applicant themselves have submitted before the Court that the arbitration is very much available to resolve the dispute.

7. *Per contra*, it is submitted by the learned counsel for the non-applicant that the intention of the parties to resolve the dispute opting arbitration is paramount consideration while allowing the application under



Section 11(6) of the Act of 1996. It is submitted that the Hon'ble Apex Court in the case of **BGM and M-RPL-JMCT (JV) vs. Estern Coalfields Limited - 2025 LiveLaw (C) 731** relying on the judgment of **Jagdish Chander vs. Ramesh Chander and others** reported in **(2007) 5 SCC 719** has held that mere use of the word 'may' will not make the dispute arbitrable because in the entirety of the clause, the intention of the parties is to be seen whether they are willing to resolve their dispute through arbitration or not.

8. It is further submitted that the High Court of Bombay in the case of **Quick Heal Technologies Limited vs. Ncs Computech Private Limited** reported in **2020 Supreme (Bom) 592 (Arbitration Petition No. 43/2018)** decided on 05.06.2020 in similar set of facts has clarified the meaning of the word 'may' and 'shall' in the arbitration clause.

9. It is further submitted that the Hon'ble Apex Court in the case of **Nagreeka Indocon Products Pvt. Ltd. vs. Cargocare Logistics (India) Pvt. Ltd. - SLP (Civil) No. 19026/2023** has also carved out the distinction between the word 'may' and 'shall' and held that the former denotes discretion but not compulsion to act, but then it is all contextual.

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

11. It is not in dispute that there is a dispute between the parties in regard to the payment of share holding on account of exit by one of the parties from the share holders agreement. It is also not in dispute that the agreement-Annexure A/3 contains a clause of arbitration. It is also not in dispute that the dispute is within limitation. In fact, the non-applicant has submitted that they are still on negotiation to derive some solution amicably.



Therefore, in the considered opinion of this Court, there exists dispute between the parties, which is required to be resolved as per the terms of the agreement. The arbitration clause-16 as agreed by the parties reads as under:-

“XVI. ARBITRATION

- i. in the event a dispute arises in connection with the validity, implementation and alleged breach of this agreement, the parties shall attempt in the first instance to resolve such dispute through negotiation within forty five days after commencement of discussions or such longer period as the parties agree to in writing, then either party may refer the dispute for resolution to a sole arbitrator jointly appointed by the MPSAIDC and the JVS. All proceedings in any such arbitration shall be conducted in English. The Arbitration shall be governed by the laws in India.
- ii. The venue of arbitration shall be Bhopal only unless otherwise agreed upon between the parties.
- iii. All legal proceedings arising out of and under this agreement shall be subject to the jurisdiction of Courts at Bhopal.”

12. The only objection, which has been raised by the non-applicant is that the intention of the parties in the said clause is to resolve the dispute through arbitration is optional. The non-applicant cannot be forced to avail the remedy of arbitration. It is further submitted that the said clause says that the parties may refer the dispute to the arbitration. Much emphasis has been laid on the word 'may' to submit that the intention of the parties is optional and not mandatory in nature.

13. The Hon'ble Apex Court in the case of **Jagdish Chander (supra)** has summarized principles regarding what constitutes an arbitration agreement and held 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 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 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.”

14. The Hon'ble Apex Court while dealing with the issue of arbitration has categorically held that if the word 'may' is used in the arbitration clause and by reading the entire clause if the intention of the parties is to further agree upon to resolve the dispute by arbitration then in such case in absence of further agreement to resolve the dispute by arbitration, the parties cannot be relegated to resolve their dispute through arbitration.

15. It is pointed out by the learned counsel for the applicant that on the similar set of facts, the non-applicant has availed the remedy of the arbitration in the cases of other applicants. Counsel for the applicant has invited attention of this Court towards the order passed in AC No. 98/2021, which has been decided vide order dated 07.05.2022 relying on the same clause as is there in the present lis and had appointed an arbitrator. It is further submitted that the non-applicants themselves have taken a stand in WP No. 20050/2022 on the basis of similar agreement wherein non-



applicant is one of the party that the writ petition is not maintainable and the parties should avail the remedy of arbitration.

16. From perusal of both the orders wherein non-applicants are party, it is found that the non-applicant in other cases have fairly conceded to the prayer of arbitration and in fact taken objection in the writ petition to avail the remedy of arbitration. Therefore, in the considered opinion of this Court, the non- applicant cannot blow hot and cold according to their whims and wishes when it comes to the appointment of the arbitrator to resolve the dispute between the parties. As in the present case the dispute is admitted, the non-applicant themselves have categorically replied the notice of arbitration by saying that still there are negotiations going on, therefore, it is appropriate that the parties should be relegated to the arbitration to resolve their dispute.

17. The Hon'ble Apex Court in the case of **Tarun Dhameja (supra)** while quoting the arbitration clause in the very first paragraph of the judgment has opined as under:

"In the present case, the arbitration clause in the Deed of Partnership dated 16.07.2016 reads as under: -

"23. Arbitration

That if at any time either during the continuance of the partnership or after the retirement of any partner, any dispute or difference shall arise between the partners or their respective heirs or any one claiming through or under them, the same shall be referred to arbitration. Arbitration shall be optional & the arbitrator will be appointed by partners with their mutual consent. In any case of dispute arise then the Jurisdiction of Indore Civil Court shall be applicable & acceptable by the partners."

In our opinion, it cannot be said that the arbitration clause is optional in the sense that the arbitration clause is non-existent or that the matter would be referred to arbitration only if all the parties to the dispute agree to refer the dispute to arbitration."

18. From the reading of the law laid down by the Hon'ble Apex Court



in the case of **Jagdish Chander (supra)**, it is also clear that for relegating the matter for arbitration by appointing an arbitrator, the intention of the parties is to be seen. From bare perusal of the arbitration clause in the agreement, it is found that in all the other lines of the paragraph the word 'shall' has been used, which gives an impression to the parties that if the parties opt for an arbitration then the Act of 1996 shall be applicable as well as the territorial jurisdiction of the Bhopal Court or the seat of the arbitration shall be at Bhopal that goes to show that in entirety the non-applicants had intended to write the said clause in the agreement to resolve their dispute through arbitration in case dispute arises. Therefore, in the considered opinion of this Court, the dispute arose between the parties is arbitrable and should be resolved through arbitration as per the terms of the agreement. Therefore, this application under Section 11(6) of the Act of 1996 is hereby allowed.

19. Considering the list of empanelled Arbitrators issued by the M.P. Arbitration Centre, Jabalpur, following order is passed :

(i) Shri Alok Verma, Former Judge, High Court of M.P., Address- Akar, HIG, 1/463, Arvind Vihar, Baghmogaliya, Bhopal (MP)-462043, Mobile No. 79748-54407, 94250-07479, Tel. No.0755-4930600, Email - alokver55@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 Bhopal.

(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.

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

(DEEPAK KHOT)
JUDGE

RAGHVENDRA