

Reserved On : 01/05/2026
Pronounced On : 31/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/PETN. UNDER ARBITRATION ACT NO. 112 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
	✓	
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M/S MIRAMBICA INFRASTRUCTURE PVT. LTD.
 Versus
 SPACE APPLICATION CENTRE & ORS.

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Appearance:

RUSHABH H SHAH(7594) for the Petitioner(s) No. 1

MR CHAITANYA S JOSHI(5927) for the Respondent(s) No. 1,2,3

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CORAM:HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT

1. Heard Mr. Rushabh H. Shah, learned advocate for the petitioner and Mr. Chaitanya S. Joshi, learned advocate for the respondents.

2. This is a petition seeking appointment of a Sole Arbitrator, praying that this Court appoint a person considered fit and proper as Sole Arbitrator, in terms of the arbitration clause, namely Clause 25 of the General Conditions of Contract (GCC), for adjudication of the disputes

that have arisen between the petitioner and the respondents.

3. Brief facts of the present petition are as follows:-

3.1 The petitioner is a company engaged in the business of civil construction. The respondent, Space Application Centre, is a research institution functioning under the aegis of the Indian Space Research Organisation. The respondent-Centre invited e-tender bearing No. SAC/CMG/C&ED/C/01/2018-2019 dated 12.04.2018 for construction of 14 'E'-type quarters in one block of G+7 at PRL Vikramnagar Housing Colony, Ahmedabad, together with allied works.

3.2 Upon the petitioner's rates being found competitive, the respondent issued a work order in its favour on 30.10.2018. In terms of the contract and the work order, the petitioner was required to execute work valued at Rs. 4,63,49,073/- within a period of 21 months, with the commencement date being on or about 14.11.2018 and the contractual completion date being on or about 13.08.2020.

3.3 It is the case of the petitioner that the delay in completion of the work is attributable to the respondent-Centre. The petitioner completed the work on 31.03.2021 and handed over the constructed building to Physical Research Laboratory (PRL) on 12.10.2021. On the petitioner's request for a completion certificate, the respondent issued one reflecting the completion date as 31.05.2021, which the petitioner contends is erroneous. Thereafter, particulars of extra items, substitutions and deviations were submitted by the petitioner on 30.09.2021, and the final bill amounting to Rs. 61,63,676/- was submitted on 09.11.2021.

3.4 As per the terms of the tender contract, payment towards the final bill was required to be released within six months from the date of its submission. It is the petitioner's case that the respondent-Centre failed to release the said payment within the stipulated period. The petitioner states that despite repeated requests, the respondent-Centre bifurcated the bill into a pre-final bill and a final bill. Payment towards the pre-final bill came to be released only on 11.03.2023, and the final bill was finalised by the respondent-

Centre only on 03.11.2023. In finalising the said bill, the respondent deducted a sum of Rs. 28,977/-. The petitioner signed the memorandum of final payment under protest, recording its objection to the said unilateral deduction. Thereafter, by letter dated 20.02.2024, the petitioner raised objections regarding the delay in finalisation of the final bill and the unilateral deduction therefrom, to which, according to the petitioner, no response was received from the respondent-Centre.

3.5 Clause 25 of the GCC forming part of the Notice Inviting Tender provides for the mechanism of settlement of disputes, including arbitration. The relevant portion of the said clause reads as under:

"Clause 25

Settlement of Disputes and Arbitration

a) If any dispute or differences of any kind whatsoever word to arise between the engineer-in-charge, CMD and the contractor regarding the following matters namely.

i) ...

ii) ...

iii) ... dispute shall in the first place be referred to the group Head CMG/Head CMD..."

3.6 Pursuant to the said clause, the petitioner addressed a letter dated 17.08.2024 to the Group Head of the respondent-Centre (respondent No. 2), setting out the disputes along with particulars of the claim and justification therefor. By letter dated 18.10.2024, respondent No. 2 replied, denying the claims and asserting that the actions taken by the respondent-department were in order and that no further action was warranted.

3.7 Clause 25 of the GCC further provides that where the decision of the Group Head, CMG/Head CMD is not acceptable to the contractor, the contractor may approach the Director of the Centre for further adjudication. The relevant portion of the said clause reads as under:

"iii.....

If the decision of the Group Head, CMD/ Head CMD is not acceptable to the Contractor, he may approach the Director of the Centre/ unit within a period of 15 days from the date of expiry of 60 days as specified above. The Director of the centre/unit shall within a period of 90 days from the date of receipt of request from the contractor or from the date of receipt of relevant particulars from the contractor whichever is later, give notice of his decision to the contractor."

3.8 Thereafter, the petitioner addressed a letter dated 29.10.2024 to the Director of the respondent-Centre, seeking

adjudication of the dispute. By letter dated 25.11.2024, respondent No. 1 responded, stating that the concerns regarding the subject work would be directed to the Director, PRL (respondent No. 3). It is the further case of the petitioner that, pursuant thereto, the petitioner addressed a letter dated 27.11.2024 to respondent No. 3, reiterating its claims and grievances and seeking disbursement of the amount stated to be due and outstanding. By letter dated 19.12.2024, respondent No. 3 responded, stating that the reply earlier furnished by respondent No. 2 was valid and in accordance with the contract, and that no further action was called for in respect of the petitioner's claims.

3.9 Clause 25 of the GCC further provides that where the decision of the Director of the Centre is not acceptable to the contractor, the contractor may approach the Court specified in Schedule F for settlement of the dispute. The relevant portion of the said clause reads as under:

"c) Remedy

1. ...

2. ...

In case the decision of the director of the centre/ unit is not

acceptable to the contractor or director of the centre/ unit fails to give decision within 90 days specified above the contractor may approach the law court specified in schedule F for settlement of dispute after giving due return notice in this regard to the director of the centre/unit.”

3.10 Thereafter, in view of the disputes having arisen between the parties, and there being a clause providing for arbitration, the petitioner issued a notice dated 10.02.2025 to the respondents invoking Clause 25 of the GCC, and proposed the names of two arbitrators, calling upon the respondent-Centre to appoint an Arbitrator from the said panel within 30 days. Respondent No. 1, by letter dated 25.02.2025, replied to the said notice denying the existence of any provision for appointment of an Arbitrator under Clause 25 of the GCC. Respondent No. 3, by letter dated 11.03.2025, similarly responded, denying the existence of such a provision.

4. As borne out from the aforesaid facts, no consensus has been reached between the parties as to the appointment of a learned Sole Arbitrator, and the petitioner has, therefore, approached this Court for appointment of a Sole Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act, 1996”), with the following

prayers:-

“A. This Hon’ble Court may be pleased to appoint any person considered fit as a sole Arbitrator in view of Arbitration clause (i.e. Clause 25) of the General Conditions of Contract in order to adjudicate upon the disputes between the Petitioner and Respondents;

B. This Hon’ble Court may be pleased to pass other and further order that deem fit and proper in the facts and circumstances of the case;

C. This Hon’ble Court may be pleased to award cost of this Petition.”

5. Mr. Rushabh H. Shah, learned advocate appearing for the petitioner, has submitted that the said contract is governed by the General Conditions of Contract, and that Clause 25 thereof, titled "**Settlement of Disputes and Arbitration**," constitutes the arbitration clause between the parties. Mr. Shah submits that the heading of the clause itself expressly and unambiguously identifies it as an arbitration clause and the term "Arbitration" finds prominent mention in the heading of the clause, and that, had the parties intended the said clause to provide merely for an internal grievance redressal mechanism, or for recourse to civil courts, the expression "Arbitration" would not have found place in the title thereof.

5.1 It is submitted that Clause 25 of the General Conditions of Contract, which is binding upon the parties, expressly designates itself as "Settlement of Disputes and Arbitration." In this regard, Mr. Shah has relied upon the judgment dated 22.04.2024 rendered by the learned Single Judge of the Hon'ble Karnataka High Court in ***Union of India v. M/s Harcharan Dass Gupta***, passed in ***Writ Petition No. 27269 of 2023 (GM-RES)***, wherein an identically worded Clause 25 was interpreted and held to constitute an arbitration agreement between the parties. Relevant paragraphs of the judgment dated 22.04.2024 are as under:

"..... Therefore, I deem it appropriate to notice clause 25 of the general conditions of contract and the place of arbitration agreed to by the parties. They all collectively read as follows:

"CLAUSE 25

SETTLEMENT OF DISPUTES AND ARBITRATION

a) If any dispute or differences of any kind whatsoever were to arise between the Engineer-in-charge, CMD and the Contractor regarding the following matters namely.

(i) The meaning of the specifications, designs, drawings and instructions herein before mentioned.

(ii) The quality of workmanship or materials used on the work and

(iii) Any other question, claim, right, matters, thing whatsoever in any way arising out of or relating to the contract, designs, drawings specifications, estimates,

instructions or orders, or those conditions or failure to execute the same whether arising during the progress of the work after the completion, termination or abandonment thereof, the dispute shall, in the first place be referred to the Group Head, CMG/Head CMD who has Jurisdiction over the work specified in the contract with the details of claims, justification for the same with supporting documents such as analysis of rates, cash vouchers and other relevant particulars. The Group Head, CMG/ Head CMD shall within a period of sixty days from the date of furnishing of required particulars whichever is later shall give written notice of his decision to the contractor.

If the Group Head, CMG/Head CMD fails to give notice of his decision within a period of 60 days from the date of receipt of (i) the Contractor's request in writing for settlement of dispute or difference as aforesaid or (ii) relevant particulars from the Contractor in support of his claims whichever is later (OR)

If the decision of the Group Head, CMG/ Head CMD is not acceptable to the Contractor, he may approach the Director of the Centre/ Unit within a period of 15 days from the date of expiry of 60 days specified above. The Director of the Centre/ Unit shall within a period of further 90 days from the date of receipt of request from the contractor or from the date of receipt of relevant particulars from the contractor in support of claims whichever is later give notice of his decision(s) to the Contractor.

(b) Subject to other forms of settlement hereinafter provided the Director of the Centre / Unit decision in respect of every dispute or difference so referred shall be final and binding upon the Contractor. The said decision shall forthwith be given effect to and Contractor shall proceed with the execution of the work with all due diligence.

(c) Remedy

- 1. When Director of the Centre/ Unit decision is not acceptable to Contractor OR*
- 2. Director of the Centre/ Unit fails to give decision*

within 90 days.

In case the decision of the Director of the Centre/ Unit is not acceptable to the Contractor or Director of the Centre/ Unit fails to give decision within 90 days specified above, the Contractor may approach the Law court specified in Schedule 'F' for settlement of dispute after giving due written notice in this regard to the Director of the Centre/Unit.

(d) Whether the claim is referred to the Group Head, CMG/ Director of the Centre/Unit or to the Law Courts, as the case may be, the Contractor shall proceed to execute and complete the works with all due diligence pending settlement of the said dispute or differences.

Obligations of the Engineer-in-charge and Contractor shall remain unsettled during considerations of dispute.

(e) The reference of any dispute or dispute(s) or difference(s) to Group Head, CMG / Head CMD or the Director of the Centre/ Unit or the Law Court may proceed notwithstanding that the work shall then be or be alleged to be complete provided always that the obligations of the Engineer-in-charge and the Contractor shall not be altered by reason of the said dispute or difference being referred to Group Head, CMG/Head CMD/Director of the Centre/ Unit or the Law Court during the progress of the works.

CLAUSE 25A

SETTLEMENT OF DISPUTES BETWEEN CMG AND CENTRAL GOVERNMENT ENTERPRISES

In the event of the contract being entered into between CMG/ Department of Space and a Central Government Public Enterprises, supersession of above clause 25 of condition of Contract the following clause shall apply 'In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or differences shall be referred by either party to the arbitration of one of arbitrators in the Department of Public Enterprises to be nominated by the Secretary to the Government of India, in charge of the Bureau of Public Enterprises. The arbitration

Act, 1940 shall not be applicable to the arbitration under this clause. The award of the arbitration shall be binding upon the parties to the dispute provided, however any party aggrieved by such award may make further reference for setting aside or revision of the award to the Law Secretary, Additional Secretary, when so authorized by the Law secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Secretary, whose decision shall bind the parties finally and conclusively. The parties to the dispute will share equally the cost of Arbitration as intimated by the Arbitrator.

Provisions of clause 25 shall not be applicable to contracts where this clause 25A is applicable and the contracts for which clause 25A is not applicable clause 25 will be applicable.

... ..

11. On a coalesce of the judgments rendered by the Apex Court and that of the High Courts of Delhi and Bombay what would unmistakably emerge is, notwithstanding the fact that the Act is a special legislation, it would not mean that the jurisdiction clause agreed between the parties has to be given a go-bye. The overriding effect of the Act cannot be construed to mean the terms of the agreement between the parties would get nullified. The jurisdiction of MSME Council would be decided on the basis of the location of the supplier, as it would only determine the venue of the Council and not the seat of the arbitration. The seat of arbitration would undoubtedly be governed and bind the parties to the arbitration agreement between them. If the facts obtaining in the case at hand are considered on the bedrock of the principles laid down in the aforesaid judgments what would unmistakably emerge is, reference to Arbitrator and the Arbitrator taking up proceedings pursuant to the said reference by the Council would suffer from want of jurisdiction, as the seat of dispute resolution between the petitioner and the Company is undoubtedly declared to be at Bengaluru.

12. If the parties have agreed in terms of Clause 25 supra

that the seat of Arbitration to be Bengaluru, it cannot be contended that Act being a special legislation would override the contract between the parties. After all, the genesis for the dispute is in terms of the contract. The contract declares the said resolution to be by way of arbitration. The seat of arbitration is declared to be Bengaluru. If that be so, all the proceedings before the Arbitral Tribunal at Delhi would be without jurisdiction. Any order passed by the Tribunal at Delhi is again without jurisdiction. The very reference by the MSME Council appointing an arbitrator is contrary to law.

... ..

In the light of the preceding analysis qua the jurisdiction of the Delhi Arbitration Centre, all other contentions are to be urged before the Arbitrator at Bengaluru. Any further observation as to whether the Company could have maintained the petition before the MSME Council would prejudice the cases of both the petitioner and the Company.

14. In the light of the law laid down by the Apex Court and that of the other High Courts interpreting Section 18, the rights of the parties to the agreement with regard to resolution of disputes, the submission of the learned counsel for the respondents that the buyer can raise a dispute where the contract was entered into, which can be anywhere in the part of the country, does not merit any acceptance. Even the submission that MSMED Act is a special enactment and the arbitration is a general law which has to yield to the special law is again unacceptable, in the light of the law laid down by the High Court of Delhi and Bombay quoted supra.

Therefore, those submissions deserve to be rejected and are accordingly rejected.

15. For the aforesaid reasons, the following:

ORDER

(i) Writ Petition is allowed in part.

(ii) The seat of arbitration assumed in terms of communication of Delhi Arbitration Centre in

No.DAC/MSME/A/D-101-197 dated 28-05-2022 is held to be a nullity.

(iii) The parties are left to avail of appropriate remedy as available in law, bearing in mind the observations made in the course of the order."

5.2 It is further submitted that the aforesaid judgment of the Hon'ble Karnataka High Court was challenged before the Hon'ble Apex Court. Mr. Shah submits that a perusal of the judgment dated 14.05.2025 of the Hon'ble Apex Court in ***Harcharan Dass Gupta v. Union of India***, reported in **2025 SCC OnLine SC 1111**, would reveal that the finding of the learned Single Judge that Clause 25 constitutes an arbitration clause was not disturbed by the Hon'ble Apex Court, as is evident from paragraph 6 of the said judgment, which reads as under:

"6. In view of the specific terms of the agreement dated 11.09.2017 contained in Clauses 25 and 25A providing for settlement of disputes, it was agreed that the seat of arbitration shall be at Bengaluru. In view of the contractual clauses, the High Court held that the proceedings conducted by the Delhi Arbitration Centre and the arbitration to be without jurisdiction, and as such illegal and contrary to law.

13. In view of the above, we allow the present appeal and set aside the impugned order dated 22.04.2024 passed by the Karnataka High Court in Writ Petition No. 27269 of 2023 (GM-RES) and direct conduct and conclusion of arbitral proceedings."

5.3 Mr. Shah has placed reliance upon the judgment of the

Hon'ble Apex Court in ***K.K. Modi v. K.N. Modi***, reported in ***(1998) 3 SCC 573***, wherein it has been held that the nomenclature employed by the parties to a clause is not determinative, and that the true intent and purport of the agreement must be examined. It has further been held therein that the mere absence of the words "arbitration," "arbitral tribunal," or "arbitrator" in a clause pertaining to settlement of disputes does not preclude such a clause from being construed as an arbitration agreement, provided the essential attributes of arbitration are otherwise present.

5.4 Mr. Shah submitted that in ***Zhejiang Bonly Elevator Guide Rail Manufacture Company Limited v. Jade Elevator Components***, reported in ***(2018) 9 SCC 774***, a clause merely titled "*Dispute Handling*" was upheld as a valid arbitration agreement since it evinced an intention to permit arbitration; Clause 25, expressly captioned "*Settlement of Disputes and Arbitration*" and containing no competing forum-election, must a fortiori qualify as such. It is further submitted that ***South Delhi Municipal Corporation of Delhi v. SMS Limited***, reported in ***2025 INSC 693*** is distinguishable, as Clause 25 satisfies every ingredient of the conjunctive test

therein: its heading expressly names arbitration, the adjudicating authorities are designated with certainty, the term "arbitration" recurs throughout Clause 25A, the clause stands judicially recognised as an arbitration provision in ***Harcharan Dass (Supra)***, across two rounds of litigation, and the respondent is estopped by its own conduct from disputing arbitrability, unlike Article 20, which failed all three prongs. It is submitted that even if the nominated appointing authority is found ineligible, the arbitration agreement survives, attracting Section 11 jurisdiction and warranting appointment of an independent Sole Arbitrator.

5.5 Mr. Shah then submitted that in the facts of the present case, the word "arbitration" is figuring and that too in the heading though not in the body, which is sufficient to bring it within ***Zhejiang Bonly (Supra)*** and to take it out of ***South Delhi Municipal Corporation of Delhi (Supra)***. In all, Mr. Shah contended that Clause 25 of the DOS/ISRO GCC be held a valid arbitration agreement under Section 7 and an independent Sole Arbitrator be appointed forthwith.

6. Per contra, Mr. Chaitanya S. Joshi, learned advocate

appearing for the respondents, has raised an objection to the effect that Clause 25 cannot be construed as an arbitration clause, inasmuch as there is no intention on the part of the contracting parties that disputes arising between them be referred to "arbitration."

6.1 It is then submitted by Mr. Joshi that the judgment relied upon by the petitioner arose out of proceedings initiated before the MSME for grievance redressal, and that the dispute in question, as well as the judgment rendered thereon, arose in that limited context. It is submitted that the said judgments, relied upon by the learned advocate for the petitioner, are wholly inapplicable to the facts of the present case.

6.2 Responding further to the judgments cited on behalf of the petitioner, Mr. Joshi submits that the entire controversy adjudicated in the aforesaid decisions of the Hon'ble Karnataka High Court and the Hon'ble Supreme Court was confined to the question of jurisdiction of the MSME facility and the seat of arbitration, and did not extend to the question of whether Clause 25 constitutes an arbitration clause.

6.3 It is submitted that the judgment of the Hon'ble Apex Court merely affirms the legal position enunciated in ***Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd.***, reported in ***2022 SCC OnLine SC 1492***, concerning the distinction between "seat" and "venue" within the meaning of Section 21 of the Arbitration and Conciliation Act, 1996, and that the said decisions are therefore of no assistance to the petitioner on the point in controversy.

6.4 Mr. Joshi submitted that the decision of the Hon'ble Karnataka High Court did not, in the first instance, address the question of whether the clause in question constitutes an arbitration clause. That dispute concerned an altogether separate issue, namely whether the parties had agreed to arbitration before the MSME facilitation forum, which has no bearing on the question of whether Clause 25 amounts to an arbitration clause. Mr. Joshi further drew attention to the "remedy" clause appearing at Page No. '73' of the paperbook, which provides that the Contractor may approach the Law Court specified in Schedule 'F'. Thus, it was submitted that since the word "arbitration" is conspicuously absent from this

clause, its exclusion must be read as ruling out arbitration by necessary implication.

6.5 Referring to ***South Delhi Municipal Corporation of Delhi (Supra)***, it was contended that the term “arbitration” itself need not appear in the clause, but its essential character must be examined to ascertain whether the parties intended to refer disputes to an independent third party, whose decision both sides agree to be bound by, with an element of finality attaching to that decision. According to Mr. Joshi, none of these essential features are present in the case at hand, and the clause in question does not reflect these core elements. Mr. Joshi submitted that a dispute resolution clause can be treated as an arbitration agreement under Section 7 of the Act, 1996 only when all the ingredients identified in ***South Delhi Municipal Corporation of Delhi (Supra)*** are simultaneously satisfied. Clause 25 of the GCC, it was argued, fails to meet these essential requirements, and there was no intention on the part of the parties to oust the jurisdiction of the Civil Courts or to adopt arbitration as their chosen mode of dispute resolution. In all, it was prayed that the present petition be dismissed on the ground that no arbitration

agreement exists between the parties and therefore no arbitrator can be appointed. Mr. Joshi further submitted that merely because in one isolated case, the respondent agreed to arbitration the clause itself, in the absence of mandatory ingredients, may not be construed as an arbitration clause.

ANALYSIS AND FINDINGS:-

7. I find that the Hon'ble High Court of Karnataka in the decision of **Harcharan Dass** (Supra) had framed the following issue for determination:-

“Whether the Delhi Arbitration Centre did have jurisdiction for constitution of an Arbitral Tribunal?”

8. Thereafter, it appears to me from paragraph No. '9' onwards that the learned Single Judge has **assumed** that Clause 25 is an arbitration clause and has proceeded only to determine the place/seat of arbitration. It is for this reason that the decision of the Hon'ble Apex Court in **Indus Mobile Distribution (P) Limited v. Datawind Innovations (P) Limited**, reported in **(2017) 7 SCC 678** and the decisions of the Hon'ble Delhi High Court in **Indian Oil Corporation Limited v. FEPL Engineering (P) Limited**, reported in

2019 SCC OnLine DEL., 8007 and **IRCON International Limited v. Pioneer Fabricators (P) Limited**, reported in **(2023) 2 HCC (DEL) 359** and the decision of the Hon'ble Bombay High Court in the case of **Gammon Engineers & Contractors (P) Limited v. Sahay Industries**, reported in **2023 SCC OnLine Bom 750** etc., are considered. The aforesaid line of decisions pertain not to whether a certain clause has to be constructed as an arbitration clause or not, but rather, if it were an arbitration clause, in the first place, then what would have been the seat of arbitration. In other words, what the learned Single Judge in **Harcharan Dass** (Supra) had considered was only the determination of the seat of arbitration, **given** that Clause 25 of the contract was assumed to be an arbitration clause.

9. The instant petition which I am called upon to adjudicate, instead, requires a determination as to whether Clause 25 is in fact an arbitration clause or not. In such circumstances, I am not persuaded by and definitely not bound by the decision of the Hon'ble Karnataka High Court. In fact, in my view, the said decision is wholly inapplicable to the controversy at hand.

10. There is nothing in the decision of the Hon'ble Apex Court confirming the decision of the Hon'ble Karnataka High Court in ***Harcharan Dass (Supra)*** that would impel me to hold that the same is actually a decision which either declares or upholds the position that Clause 25 is in fact **adjudicated** to be an arbitration clause.

11. Now, taking a close look at Clause 25, I am of the clear opinion that the said cannot be construed as an arbitration clause. I say so with conviction because the word arbitration does not feature in the body of the Clause. Although, the word arbitration features in the heading, there is nothing in the body of the clause to suggest any 'party autonomy' which is a basic ingredient in determining whether a dispute resolution clause is indeed an arbitration clause or not, within the meaning of the Act, 1996. Further from sub-clause (c) under the heading of "Remedy", it will be seen that in case of a lack of decision or an adverse decision, "the Contractor may approach the Law court specified in schedule 'F' for settlement of dispute... "

12. In the facts of the present case, we are not concerned with Clause 25A and therefore, no energy needs to be expended in interpretation of Clause 25A. In **Zhejiang Bonly** (Supra), the dispute resolution clause which was termed as an arbitration clause read as under :

***“15. Dispute Handling** - Common processing contract disputes, the parties should be settled through consultation; consultation fails by treatment of to the arbitration body for arbitration or the court.”*

13. A bare perusal of the same would makes it clear that the word “arbitration” features in the body of the clause. Therefore, I am of the opinion that **Zhejiang Bonly** (Supra) does not apply to the facts of the present case.

14. In the recent decision of the Hon’ble Apex Court in **South Delhi Municipal Corporation of Delhi** (Supra), it will be seen that the Clause under question reads as under :-

“ARTICLE 20: DISPUTES

In the event that any dispute, controversy or claim arises among the Parties in connection with or under this Agreement or the interpretation of any of its provisions or upon the occurrence of an even of Default any party

shall refer the dispute, controversy or claim to the Commissioner, MDC.

Section 20.1 Mediation by Commissioner

The Party that initially issued the notice of intention to refer the matter to the MCD and MCD in Consultation with Consultant will appoint an officer who will look into the written documents; (i) a description of dispute; (ii) a statement of that party's position; and (iii) copies of relevant documentary evidence in support of such position.

(e) Within 10 days of receipt of the above documents, the other parties shall submit; (i) a description of dispute; (ii) a statement of that party's position; and (iii) copies of relevant documentary evidence in support of such position.

(f) The officer appointed by MCD may call for such further documentary evidence and/or interview such persons, as it may deem necessary in order to reach a decision.

(g) The officer appointed by MCD shall give notice to the parties of its decision within 20 days of receipt of the documents provided by the parties pursuant to subsection (b) and (c) above. The decision of the officer appointed by MCD shall be binding.

(h) The officer appointed by the MCD should give decision in writing. The decision of the MCD shall be final and binding on party..."

15. I am of the opinion that the aforesaid clause is akin to Clause 25 in a way that none of the aforesaid clauses contain any arbitration mechanism or even the word "arbitration" in the body of the respective clauses. Therefore, the

observations of the Hon'ble Apex Court in the following paragraphs, which are quoted hereinbelow, apply on all fours to the clause at hand:-

"D.1.3. The Necessary Ingredients of a Valid Arbitration

Agreement

30. *Considering the global position on the validity of arbitration agreements in tandem with the settled law that holds the field in India, we find that the existence of an arbitration agreement necessarily postulates the presence of the following ingredients:*

i. Clear Intent to Arbitrate.

The agreement must reflect a definitive and mutual intention to refer disputes to arbitration, excluding the jurisdiction of civil courts in respect of such matters. Consensus ad-idem or 'meeting of the minds' of the respective parties towards settling any disputes that may arise between them through the process of arbitration must be made out from the form and substance of the legal agreement or contract. This ideally entails the parties reducing their intention of entering into an arbitration agreement into some tangible medium.

ii. Binding Adjudicatory Process

The arbitration agreement must contemplate a binding and enforceable resolution of disputes. The process must culminate in a final and conclusive award, not a non-binding recommendation or mediation outcome. In essence, the result of the arbitral process should be final and binding on both the parties.

iii. Compliance with Arbitration Norms

While the statutory minimums do not universally require specification of seat, venue, or applicable procedural rules, best practices and several foreign jurisdictions encourage clarity in these respects to

ensure legal certainty. The agreement should allow for party autonomy in the appointment of arbitrators and procedural conduct, subject to statutory safeguards. The adversarial process, which inheres in the institution of arbitration, must also be given due credence via provision for an impartial adjudicatory body, whose decisions involve deference to the principles of natural justice.

31. *We may, however, hasten to add that the aforementioned elemental test is a conjunctive one, and not a disjunctive one. In other words, all the elements identified hereinabove must co-exist, apart from being duly proven by the party which seeks to assert that an arbitration agreement subsists.*

32. *Consequently, it stands clarified that a dispute resolution clause may only rise to the level of a valid arbitration clause or agreement when it signifies a clear intent to arbitrate, entails a binding adjudicatory process, and contemplates compliance with general arbitral norms.*

D.2. Does Article 20 of the subject-Concession Agreements constitute an arbitration agreement?

33. *The second limb of this issue, concerns the consideration of the facts and circumstances of these appeals amidst the legal backdrop we have previously set out. We may, at this stage, revert back to **paragraph 9** where the dispute resolution clauses contained in all the three Concession Agreements are extracted and reproduced.*

34. *At the very outset, it may be seen that Articles 20 in the cases of DSC Ltd. and CCC Ltd. are identical for all intents and purposes while the same clause in the case of SMS Ltd. is faintly different. For the sake of completeness, we may note these minute differences before proceeding with the analysis.*

35. *Firstly, the cases of DSC Ltd. and CCC Ltd. add certain specific sub- provisions regarding the ‘mediation’ process itself, while only summary procedure is prescribed in the case of SMS Ltd. Secondly, the stipulation that an officer may be appointed ‘from within or without MCD’ features solely in the*

SMS Ltd. agreement, and is conspicuously absent in the clauses pertaining to DSC Ltd. and CCC Ltd. Thirdly, the latter two agreements introduce an express declaration that the officer's decision shall be 'final and binding', a formulation that is absent in the SMS Ltd. version.

36. *Having equipped ourselves with the requisite recitals, we now turn to appraising the same on the anvil of the law elucidated hereinabove pertaining to valid arbitration agreements.*

D.2.1. Intent to Arbitrate

37. *The first and foremost requirement of an arbitration agreement, when it is in writing, is that the parties must have consciously and unambiguously agreed to submit their disputes to arbitration. This intent must be evident from the language of the contract and the surrounding contractual framework.*

38. *A plain reading of Article 20 across all three Concession Agreements does not reveal any express intent to arbitrate. We say so for the following reasons:*

(a) *It may be noted that the subject-clause itself is titled as 'Mediation by Commissioner', which immediately raises a conundrum as to the mode of dispute resolution. We are well aware of the judicial precedents that waive the need for express reference to arbitration or an excessive focus on nomenclature.¹¹ However, such principles cannot be stretched so far so as to make them wholly unworkable. It is inconceivable to us as to why two parties, who are ad idem in wanting to settle their disputes through arbitration, would label the dispute resolution clause in such a befuddling manner. The title of the clause (Section 20.1 of Article 20) unequivocally indicates a non-adjudicatory and conciliatory process rather than an arbitration mechanism.*

(b) *What adds fuel to the fire is the conspicuous absence of the words 'arbitration' or 'arbitrator' from*

the dispute resolution clauses. Even the expression 'Arbitration Act' is itself entirely missing. These terms are generally included in arbitration agreements to reflect the parties' true intention.

(c) *Moreover, the reference is to the 'Commissioner, MCD,' rather than to an arbitral tribunal or an independent third-party adjudicator. This suggests an internal dispute resolution mechanism rather than an external arbitration forum.*

(d) *The DSC Ltd. and CCC Ltd. agreements introduce further procedural details, such as the officer calling for additional documents and conducting interviews. However, none of these procedural steps alter the fundamental nature of the process, 11 Infrastructure Leasing & Financial Services Ltd. v. HDFC Bank Ltd., 2023 SCC OnLine SC 1371; Yellapu Uma Maheswari v. Buddha Jagadheeswararao, (2015) 16 SCC 787; Assam Small Scale Ind. Dev. Corp. Ltd. & Ors. v. J.D. Pharmaceuticals & Anr, 2005 Supp (4) SCR 232, which at best is an elaborate administrative fact-finding exercise, rather than an arbitral adjudication.*

(e) *Additionally, the appointment of the decision-maker is entirely within the control of MCD, with no role for the other contracting party in selecting or influencing the selection of the officer. This further undermines the claim that the clause was intended to establish an arbitration framework.*

D.2.2. Final and Binding Nature

39. *A key argument advanced by the private contractors is that the decision rendered under Article 20 is 'final and binding', thereby making it akin to an arbitral award. While it is true that an arbitration clause must result in a conclusive determination, finality alone does not equate it to arbitration.*

40. *We may note at the outset that in SMS Ltd. the phrase used is 'final', not 'final and binding' which instead finds mention in the cases of DSC Ltd. and CCC Ltd. On a textual*

and surface-level analysis, Article 20 across all cases thus prima facie seems to satisfy the subject- ingredient; however, it does not impact the outcome of these cases.

41. *We say so because other forms of decision-making—such as expert determinations, departmental adjudications, and administrative reviews—even when found to be final and binding, do not ipso facto constitute arbitration. The arduous task of ascertaining and identifying the category to which these cases fall is beyond the scope of these appeals.*

D.2.3. Compliance with Arbitral Norms

42. *Finally, we turn to analyzing Article 20 under the lens of its alliance with the norms of arbitration. This particular characteristic is quite important for a valid arbitration agreement. If a clause does not sufficiently align with the accepted best practices of contemporary arbitration, it will generally be unworkable and essentially dead letter. What is also envisaged under this element is the compliance with the Arbitration Act and its subsequent Amendments.*

43. *It may be clarified here that there is no straitjacket formula for listing arbitral norms exhaustively, as these norms may vary from time to time. While we cannot delineate arbitral norms from stem to stern, we have short-listed some of these norms for the purposes of these appeals, which unfortunately do not find any explicit or implicit mention in the subject-dispute resolution clauses. D.2.3.1. Party Autonomy in Arbitrator Appointment*

44. *Clearly, in the facts of the instant appeals, the officer who decides the dispute(s) is appointed exclusively by MCD/SDMC, with no input from the other contracting party, i.e. the private contractors. In contrast, valid arbitration agreements invariably provide for a mutually agreed- upon arbitrator or an independent appointing authority, such as a Court or an arbitral institution lest they run afoul of the settled principles of bi-partisanship and equality.*

D.2.3.2. Adversarial Process

45. In **Encon Builders (supra)**, this Court held that arbitration must be a structured adjudicatory process, where parties are afforded the opportunity to argue their case before a neutral and independent decision-maker. In our considered opinion, Article 20 lacks such an inquiry. It is admitted that there are no provisions for **(i)** oral hearings; **(ii)** examination and cross-examination of witnesses; and **(iii)** application of formal rules of evidence or procedure in the impugned clauses. The appointed officer merely reviews written submissions and, at most, may seek additional documents or conduct interviews.

46. We have thus no hesitation in holding that Article 20 lacks the judicial element that lends arbitration its unique credibility as an adjudicatory mechanism, distinct from other forms of dispute resolution. By omitting the essential procedural safeguards of adversarial proceedings and impartial adjudication, the clause fails to meet the threshold requirements of arbitration and cannot be sustained as such.

D.2.3.3. Neutrality and Independence of the Arbitrator

47. The principles of natural justice, of course, must inhere in any judicial process, even if that process is pseudo-judicial. That is precisely why it is necessary for the Arbitrator to be an impartial functionary in any supposed arbitration agreement. When such a requirement is unmet, that mode of dispute resolution may not have the benefit of being termed as 'arbitration'. In **Tollways (supra)**, this Court expressly held that a dispute resolution mechanism controlled by one party lacks the independence required for arbitration.

48. Under Article 20, the decision-maker is an officer of MCD, making the process inherently biased in favour of the Municipal Corporation(s). It does not even provide for the officer to be a legally qualified adjudicator, further calling into question the nature of the decision-making process. Moreover, while Article 20 in the case of SMS Ltd. at the very least specifies that the appointed officer may be from 'within or without MCD', the latter two cases—DSC Ltd. and CCC Ltd.—completely dispense with even this limited semblance of impartiality. The absence of any requirement for an

external appointee in these cases further entrenches the one-sided nature of the appointment process, allowing MCD to unilaterally select a decision-maker from within its own ranks, thereby compromising the neutrality essential to any adjudicatory mechanism.

49. *In conclusion, a holistic analysis of Article 20 across the subject Concession Agreements leads us to the inescapable conclusion that it does not satisfy the requirements of an arbitration agreement under Section 7 of the Arbitration Act. While certain textual elements—such as the use of the phrase ‘final and binding’ in the cases of DSC Ltd. and CCC Ltd.—may superficially resemble arbitration, a deeper examination reveals that the clause is procedurally and structurally deficient in ways that render it incapable of operating as an arbitration clause in law.*

50. *Article 20 lacks the judicial element that lends arbitration its distinct credibility as an adjudicatory mechanism. It is not an arbitration clause either in letter, or in spirit and effect. Its ambiguity and lack of procedural integrity have, if anything, resulted in greater litigation rather than expeditious resolution, thereby undermining the very purpose of arbitration.*

51. *Accordingly, we hold that Article 20 does not constitute an arbitration agreement under the Arbitration Act. The impugned judgments of the High Court in the cases SMS Ltd. and CCC Ltd., dated 09.03.2017 and 02.11.2022 respectively, which construed it as such, are set aside. The view taken in DSC Ltd. vide judgment dated 29.07.2022, which correctly rejected arbitration, is affirmed.”*

16. In view of the aforesaid decision of the Hon’ble Apex Court in ***South Delhi Municipal Corporation of Delhi*** (*Supra*), I am of the clear opinion that Clause 25 is not an arbitration clause within the meaning of Section 7 of the Act, 1996. Further, merely because in one of the disputes, the

respondent agreed to go to arbitration would not, in my opinion, bind the respondent in all other disputes. This is so because, the clause itself is held not be an arbitration clause. Hence, the present petition must fail. Accordingly, the present petition stands dismissed with no order as to costs.

BINA SHAH

D.N.RAY,J)