

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Arbitration Application No. 21/2025

D.b. - K.h. Joint Venture, (A Joint Venture Of M/s D.b. Infratech And M/s K.h. Construction) Through Its Representative Mr. Bhom Singh, S/o Hameer Singh, Aged About 31 Years, R/o 85 , Vaishanav Nagar -Ii, Jodhpur

----Petitioner

Versus

1. Rajasthan State Road Development And Construction Corporation, Through Managing Director Jaipur.
2. Project Director, R. S.r.d.c. Ltd. Unit Udaipur 74- Ashok Nagar Road No. 3 , Udaipur.

----Respondents

For Petitioner(s)	:	Mr. Mudit Nagpal
For Respondent(s)	:	Mr. Ankur Mathur

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

23/03/2026

1. The present application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an independent arbitrator for adjudication of disputes alleged to have arisen between the parties in relation to a works contract.
2. The brief facts, necessary for disposal of the present application, are that the respondent-General manager, R.S.R.D.C issued a Notice Inviting Tender bearing No. 319/2023-24 dated 02.08.2023 for construction of academic block at the Medical College, Rajsamand. Pursuant thereto, the applicant participated in the bidding process and was

issued a Letter of Acceptance dated 04.10.2023, followed by a work order dated 05.10.2023.

3. It is the case of the applicant that after commencement of work, certain hindrances arose, due to, non-supply of drawings by the respondent, compelling the applicant to raise communications including letter dated 18.10.2023. Subsequently, the applicant invoked Clause 24 of the agreement by way of representation dated 01.10.2024 seeking resolution of disputes. It is further contended that despite repeated requests, no effective decision was taken and no arbitrator was appointed, leading to filing of the present application.

4. Learned counsel for the applicant while relying upon the following judgements has stated that in these cases the Courts have interpreted the said clause 24 (different clause no. in respective cases) as the clause of arbitration:

- ***M/s Compucon Software Ltd. vs. Jaipur Vidyut Vitran Nigam Ltd; S.B. Arb. App. No. 40/2022 at Jaipur***
- ***M/s Chhagni Ram Gehlot vs. The Jodhpur Development Authority & Anr.; S.B. Arb. App. No. 9/2020***
- ***Chhagni Ram Gehlot vs. State of Rajasthan; S.B. Civil Misc. Arb. App. No. 146/2011***
- ***Chetan Construction Co. vs. State & Ors.; RLW 2005(2) Raj. 996***

5. Learned counsel for the applicant further submits that disputes having arisen between the parties and the respondent having failed to act, therefore, the applicant has

no other option but to approach this Court under Section 11(6) of the Act of 1996 to appoint an independent arbitrator.

6. Per contra, learned counsel for the respondent has opposed the application and submits that in view of Clause 25 of the agreement, arbitration is expressly excluded, and therefore, the present application is not maintainable. It is further submitted that the agreement provides only for a dispute redressal mechanism under Clause 24 and thereafter the parties are at liberty to seek appropriate remedies before the competent civil court.
7. In support of his contention, reliance has been placed upon the judgment passed by Division bench of this Court at Jaipur in the case of ***M/s Suri Constructions vs. Rajasthan Housing Board & Ors; D.B. Civil Misc. Appeal No. 796/2019***, wherein a similar clause was held not to constitute an arbitration agreement.
8. In response, learned counsel for the applicant submits that the said judgment no longer holds the field in view of the decision of the Hon'ble Apex Court in the case of ***M/s Eminent Colonizers Pvt. Ltd vs. Rajasthan Housing Board & Ors., Civil Appeal No. 753 of 2026***, vide which a similar judgement of the High Court was overturned and the clause 23 of that agreement was construed as an arbitration clause, hence, in the light of the principle laid down, the clause 24 of the present case should be construed as an arbitration clause and sole arbitrator may be appointed by this Court.

9. This Court has considered the submissions advanced by the parties and perused the material available on record.
10. At the outset, before delving into the case, it is pertinent to refer to the decision rendered by the Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, (2024 INSC 532)***, wherein while relying upon ***In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899, (2023 INSC 1066)***, it has been held that the scope of inquiry at the stage of appointment of an arbitrator is confined to examining the prima facie existence of an arbitration agreement and not other issues. The relevant extract from paragraph 113 of the judgment reads as follows:

“113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re: Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted herein below:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a time bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]”

(Emphasis supplied)”

11. The core issue which arises for consideration is whether an arbitration agreement exists between the parties so as to warrant exercise of jurisdiction under Section 11(6) of the Act of 1996.
12. We will now see that clause 24 of the agreement provides for a "Dispute Redressal System" whereby disputes are to be referred, in the first instance, to a designated competent authority, whose decision is to be conveyed within a stipulated period. The said clause contemplates an in-house administrative resolution mechanism. The clause 24 is reproduced here for ready reference:

"24. Dispute Redressal System

24.1 1. If any dispute or difference of any kind what so ever shall arise in connection with or arising out of this Contract or the execution of works or maintenance of the works there under, whether before its commencement or during the progress of works or after the termination, abandonment or breach of the Contract, it shall, in the first instance be referred for settlement of the competent authority, described along with their powers in the Contract Data above the rank of the Engineer.

ii. The competent authority shall within a period of forty five days after being requested in writing by the Contractor to do so, convey his decision to the Contractor. Such decision in respect of every matter so referred shall subject to review as hereinafter provided, be final and binding upon the Contractor.

iii. In case, the works is already in progress, the Contractor shall proceed with the execution of the works, including maintenance thereof, pending receipt of the decision of the competent authority as aforesaid with all due diligence."

13. And the clause 25, which is material for the present controversy, reads to the effect that in view of Clause 24, it is a condition of the contract that there shall be no arbitration

for settlement of disputes between the parties. For ready reference the clause 25 is hereunder:

“25. Arbitration

25.1 In view of the provision of Clause 24 on Dispute Redressal System, it is the condition of the Contract that there will be arbitration for the settlement of any dispute between the parties.”

14. A bare and meaningful reading of Clause 25 leaves no manner of doubt that the parties, with full knowledge and consent, have consciously agreed to exclude arbitration as a mode of dispute resolution. The contractual stipulation is clear, categorical, and admits of no ambiguity.

15. A co-ordinate Bench of this Court in ***APR Projects Pvt. Ltd. (M/s.) vs. Rajasthan State Road Development & Construction Corporation Ltd. Jaipur and Ors, 2016 Supreme(Raj) 836*** has, in a similar factual matrix, held that Clause 24 cannot be construed as an arbitration agreement, particularly in the presence of an express bar under Clause 25. The relevant para is reproduced herein as:

“I have considered the submissions made by learned counsel for the parties and have perused the material available on record inclusive of Clauses 24 and 25 of the agreement. Clause 24 of the agreement provides for raising the dispute before the competent authority/filing of appeal before standing empowered committee and they have been entrusted with the task of settling the dispute between the parties. The argument of the applicant that non-compliance of Clause 24 would revive or create a right to seek arbitration is misconceived. Failure of the dispute redressal mechanism, at best, may entitle the aggrieved party to seek recourse before an appropriate civil forum, but it cannot be construed as giving rise to an arbitration agreement where none exists.

Clause 25 of the agreement provides as under:

“In view of the provision of the clause 24 on Dispute Redressal System it is the condition of the

Contract that there will be no arbitration for the settlement of any dispute between the parties.”

A bare reading of Clause 24 of the agreement between the parties indicates that the same only provides for grievance redressal system alongwith appellate authority of the respondent and the said Clause by itself cannot be termed as an arbitration agreement between the parties. Besides the above, Clause 25.1 (supra) clearly spells that there will be no arbitration for the settlement of any dispute between the parties. The said Clause categorically provides for not referring the dispute to arbitration. In view thereof, it is apparent that there does not exist any arbitration agreement between the parties and application under Section 9 of the Act, for which, existence of arbitration agreement is sine qua non was not maintainable and the trial court did not commit any error in rejecting the application filed by the appellant. In view thereof, no interference is called for in the order impugned. The appeals filed by the appellant are dismissed. However, the appellant is left free to take appropriate proceedings in accordance with law.”

16. Similar views have been taken in ***Paramand vs. State of Rajasthan & Ors., 2015 Supreme(Raj) 673; Sri Dilip Kumar Kar vs Hindustan Steel Works Construction Ltd & Ors, 2015 Supreme(Tri) 734 and Sadanand Singh Construction Pvt. Ltd. vs. Managing Director, National Building Construction Corporation, 2020 Supreme(Pat) 549*** wherein it has been held that a dispute resolution clause coupled with an express bar against arbitration cannot be treated as an arbitration agreement.
17. It is well settled that consent of parties is the cornerstone of arbitration. As held by the Hon'ble Supreme Court in ***Municipal Corporation of Delhi vs M/s Consolidated Construction Consortium Ltd, 2015 Supreme (SC) 832,*** a valid arbitration agreement must reflect a clear and

unequivocal intention of the parties to refer disputes to arbitration.

“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.”

18. Further, in ***Jagdish Chander vs. Ramesh Chander, 2007(3) Supreme 874***, the Hon’ble Supreme Court has held that unless there exists a binding obligation to refer disputes to arbitration, the clause cannot be construed as an arbitration agreement as the main attribute of an arbitration agreement namely, *consensus ad idem* to refer the dispute to arbitration was missing. The relevant para is reproduced herein as:

“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 vs. U.P. Small Industries Corporation Ltd. [1999 (2) SCC 166] and Bihar State Mineral Development Corporation 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 an 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) 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.

9. Para 16 of the Partnership deed provides that if there is any dispute touching the partnership arising between the partners, the same shall be mutually decided by the parties or shall be referred to arbitration if the parties so determine. If the clause had merely said that in the event of disputes arising between the parties, they "shall be referred to arbitration", it would have been an arbitration agreement. But the use of the words "shall be referred for arbitration if the parties so determine" completely changes the complexion of the provision. The expression "determine" indicates that the parties are required to reach a decision by application of mind. Therefore, when clause 16 uses the words "the dispute shall be referred for arbitration if the parties so determine", it means that it is not an arbitration agreement but a provision which enables arbitration only if the parties mutually decide after due consideration as to whether the disputes should be referred to arbitration or not. In effect, the clause requires the consent of parties before the disputes can be referred to arbitration. The main attribute of an arbitration agreement, namely, consensus ad idem to refer the disputes to arbitration is missing in clause 16 relating to settlement of disputes. Therefore it is not an arbitration agreement, as defined under section 7 of the Act. In the absence of an arbitration agreement, the question of exercising power under section 11 of the Act to appoint an Arbitrator does not arise.

10. Learned counsel for the first respondent next contended that clause 16 of the deed of partnership discloses a clear intention on the part of the partners to settle their dispute relating to partnership by an alternative dispute resolution process. He pointed out that clause 16 required the partners to "mutually decide the disputes" or "refer the disputes to arbitration". This, according to him, is in the nature of a 'con-arb' agreement, that is, it requires the parties to settle the disputes by negotiations (conciliation and mediation), and failing settlement by such negotiations, refer the disputes to arbitration for settlement. He submitted that the clause provides what section 89 CPC now statutorily requires. It is

contended that if under section 89 of CPC, parties can be mandated to have recourse to alternative dispute resolution processes to settle their disputes, there is no reason why the disputes between the parties in this case should not be referred to ADR process including arbitration under clause 16. This contention, though attractive, has no merit. The object and scope of section 11 of the Act is specific and narrow. Though the power exercised under section 11 of the Act has been held to be a judicial power [see SBP & Co. vs. Patel Engineering Ltd - 2005 (8) SCC 618], the proceedings relate only to appointment of Arbitral Tribunal. The disputes as such are not before the Chief Justice or his designate for adjudication. Therefore, section 89 CPC has no application. It should not also be overlooked that even though section 89 mandates courts to refer pending suits to any of the several alternative dispute resolution processes mentioned therein, there cannot be a reference to arbitration even under section 89 CPC, unless there is a mutual consent of all parties, for such reference. Be that as it may.

11. The existence of an arbitration agreement as defined under section 7 of the Act is a condition precedent for exercise of power to appoint an Arbitrator/Arbitral Tribunal, under section 11 of the Act by the Chief Justice or his Designate. It is not permissible to appoint an Arbitrator to adjudicate the disputes between the parties, in the absence of an arbitration agreement or mutual consent. The designate of the Chief Justice of Delhi could not have appointed the Arbitrator in the absence of an arbitration agreement.”

19. Likewise, in **BGM and M-RPL-JMCT (JV) vs Eastern Coalfields Ltd., SLP (C) Diary No. 21451/2024**, while setting out the intent the Hon’ble Supreme Court has held that the use of expressions such as “may be referred to arbitration” also does not constitute a binding arbitration agreement. The relevant observations are quoted below:

“25. Following the decision in Jagdish Chander (supra), this Court, in Mahanadi Coalfields (supra), held that Clause 15 of the Contract Agreement though is titled “Settlement of Disputes /Arbitration”, the substantive part of it makes it abundantly clear that there is no arbitration agreement between the parties to refer either present or future dispute to arbitration.

26. What is clear from the judgment in Mahanadi Coalfields (supra) is that 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. In Jagdish Chander (supra), 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, were found not indicative of 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" would not constitute an arbitration agreement. Because 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. This is so, because such clauses require the parties to arrive at a further agreement to go to arbitration, as and when disputes arise. Therefore, 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.

27. Now, the question which arises for our consideration is whether Clause 13 constitutes an arbitration agreement or it is just an enabling provision for parties to agree to refer the dispute(s) for settlement through arbitration.

28. Clause 13 in its first paragraph sets out intent to avoid litigation and advises the contractor to make effort to settle the dispute at the company level. Second paragraph sets out the procedure for raising the dispute/ claim for settlement at the company level. It provides that the contractor should make request in writing to the Engineer-in-charge for settlement of disputes/ claims within 30 days of arising of the cause of dispute/ claim failing which it shall not be entertained by the company. Thereafter, clause 13 provides for a two-stage procedure for resolution of the dispute. In the first stage, dispute is to be referred to Area CGM, GM. If difference persists, the dispute is to be referred to a committee constituted by the owner. If difference continues to persist, the second stage procedure becomes applicable. According to which, if the dispute or difference relates to the interpretation and application of the provisions of commercial contracts between Central Public Sector Enterprises CPSEs /Port Trusts inter se, or is between CPSEs and Government Departments/ Organizations (excluding disputes concerning railways, income tax, Customs and Excise departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No.4(1)/2013-DPE (GM)/FTS -1835 dated 22-05-2018. However, in case of

parties other than Govt. Agencies, the redressal of the dispute may be sought through arbitration as per 1996 Act.

29. The High Court opined that use of the words “may be sought through Arbitration...” indicate that at the stage of entering the contract, parties were not ad idem that inter se dispute shall be resolved through arbitration, therefore the said clause would not constitute an arbitration agreement.

30. The argument of the learned counsel for the appellant is that clause 13 provides option to the parties, which include any of one of the parties, to seek dispute resolution through arbitration and, therefore, it is nothing but an arbitration clause. According to him, use of the word “may” in clause 13 does not provide choice to the parties to agree, or not to agree, for arbitration, rather it is a choice given to either of the parties to seek a settlement through arbitration and, therefore, when one party exercises the option, the other party cannot resile from the agreement. In that sense, according to him, clause 13 is an arbitration agreement.

31. We do not agree with the aforesaid submission because clause 13 does not bind parties to use arbitration for settlement of the disputes. Use of the words “may be sought”, imply that there is no subsisting agreement between parties that they, or any one of them, would have to seek settlement of dispute(s) through arbitration. It is just an enabling clause whereunder, if parties agree, they could resolve their dispute(s) through arbitration. In our view, the phraseology of clause 13 is not indicative of a binding agreement that any of the parties on its own could seek redressal of inter se dispute(s) through arbitration. We are, therefore, of the considered view that the High Court was justified in holding that clause 13 does not constitute an arbitration agreement.

32. As it is not the case of the appellant that parties at any later stage have agreed to refer the disputes to arbitration, in our view, the High Court was justified in rejecting the application seeking appointment of an arbitrator. Issue (ii) is decided in the aforesaid terms.”

20. In light of the aforesaid, it is a settled principle of law that the jurisdiction under Section 11 of the Act of 1996 can be invoked only when there exists a valid and enforceable arbitration agreement between the parties. In the absence of such an agreement, this Court cannot appoint an arbitrator by

implication or inference contrary to the express terms of the contract.

21. In the present case, not only is there an absence of an arbitration clause, but there is a specific contractual bar against arbitration. Such exclusionary clauses are binding upon the parties and must be given full effect.

22. The cases relied upon by the applicant are distinguishable. In the case of **M/s Chhagni Ram vs JDA** (*supra*), as noted in paragraph 5, learned counsel for the parties had consented to the appointment of an independent arbitrator.

23. Similarly, reliance placed on **M/s Compucom** (*supra*), **Chhagni Ram vs State** (*supra*), and **Chetan Construction** (*supra*) is misplaced. Although in those cases the Court interpreted the dispute resolution clauses as arbitration clauses based on their respective facts, none of them contained a specific bar akin to that provided under Clause 25 of the present agreement.

24. Reliance placed by the applicant on **M/s Eminent Colonizers** (*supra*) is also misplaced. In the said case, the Hon'ble Apex Court was dealing with a materially different factual and legal matrix, wherein the parties had already participated in arbitral proceedings pursuant to an order passed under the pre-amendment regime and sought to challenge the existence of the arbitration agreement only at the stage of assailing the arbitral award. The Hon'ble Supreme Court, in the peculiar facts of the said case, held that the High Court had erred in examining the existence and validity of

Clause 23 and in concluding that the same did not constitute an arbitration clause. It was further held that once the parties had accepted the order appointing an arbitrator and participated in the arbitral proceedings, they could not subsequently question the existence or validity of the arbitration clause. The ratio of the said judgment is, therefore, confined to the principle of waiver and acquiescence and does not advance the case of the applicant in the present matter, particularly when the agreement under consideration therein did not contain any express exclusionary stipulation akin to Clause 25 of the present contract specifically barring arbitration.

25. In view of the foregoing discussion, this Court is of the considered opinion that no arbitration agreement exists between the parties. Consequently, the present application under Section 11(6) of the Act of 1996 is not maintainable.

26. However, it is clarified that dismissal of the present application shall not preclude the applicant from availing such other remedies as may be available in accordance with law, including approaching the competent civil court.

27. The application is, accordingly, dismissed. All pending application(s), if any, also stand disposed of.

(MUKESH RAJPUROHIT),J