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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 01st April, 2026
Pronounced on: 10th April, 2026

+ ARB.P. 36/2026

LIFEWELL DIAGNOSTICS PRIVATE LIMITEDPetitioner
Through: Mr. Nawaz Sherif, Mr. Rishabh, Mr.
Arun Prakash, Advs.
Email:
sherifandassociates@gmail.com

versus

MICRON LABORATORYRespondent
Through: Mr. Akshay Makhija, Sr. Adv. with
Mr. Aayushman Shukla, Adv.
Mob: 8860555644
Email: aayushman247@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

1. The present petition has been filed seeking appointment of a sole arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (“Arbitration Act”), on the basis of disputes having arisen between the parties pertaining to a Revenue Sharing Agreement (“Agreement”) dated 01st September, 2023, whereby, the petitioner was granted the right to operate the pathology lab of the respondent situated at *D-10, LGF, Green Park, New Delhi*, in the name and style of ‘Micron Laboratory’.
2. As per the petitioner, issues have arisen between the parties on



account of various defaults by the respondent in payment obligations under the Agreement, with an outstanding of Rs. 23,93,916/- (Rupees Twenty Three Lacs Ninety Three Thousand Nine Hundred Sixteen) being due to the petitioner.

3. The petitioner relies upon Clause 29 of the Agreement, which contains the provision for dispute resolution, for seeking appointment of an arbitrator. The said Clause 29 of the Agreement reads in the following manner:

“xxx xxx xxx

29. DISPUTE RESOLUTION:

- a. In the event of any dispute or difference arising in relation to this Agreement, its interpretation, performance or any other matter, the same shall be decided by amicable discussion between the Parties.
- b. In the event of the Parties being unable to resolve the dispute by amicable discussions as above or within a period of 30 days or such further time as the Parties may be agreed will be free to avail their legal remedies.
- c. In the event of the Parties being unable to resolve the dispute by amicable discussions as above or within such further time as the Parties may mutually agree, the dispute may be referred to the arbitration in terms hereof.
- d. Arbitration shall be conducted as follows:
 - (i) All proceedings in any arbitration shall be conducted in English;
 - (ii) The arbitration shall be done by the Sole Arbitrator appointed jointly by the parties, failing which, in accordance with the provisions contained in the Arbitration and Conciliation Act, 1996;
 - (iii) The arbitration award shall be final and binding on the Parties and the Parties agree to be bound thereby and to act accordingly;
 - (iv) The arbitral Tribunal may award to a Party that substantially prevails on the merits its costs and reasonable expenses (including reasonable fees of its counsel);
 - (v) The venue and seat of such arbitration tribunal shall be at Delhi and
 - (vi) The Arbitration Proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any re-enactment or modification or amendment thereof.
 - (vii) The existence of any dispute or difference or the initiation or continuance of the arbitration proceedings shall not postpone or delay the performance by the Parties of their respective obligations under this Agreement.

xxx xxx xxx”

4. On the other hand, the respondent has resisted appointment of an



arbitrator in the present case by pleading that it is not liable to make any payments to the petitioner as both the parties had mutually terminated the Agreement on 03rd May, 2024. It was further mutually decided between the parties that the account of both the parties will be treated to be settled, and accordingly, no party will raise any claim against the other in the future. As per the respondent, in terms of the said mutual understanding, no dispute survives between the parties.

5. Further, the respondent has also disputed the Arbitration Clause relied upon by the petitioner, on the ground that the same does not constitute a binding Arbitration Agreement between the petitioner and the respondent. It is the case of the respondent that Clause 29 of the Agreement between the parties does not make the recourse to arbitration mandatory, as the use of/reference to the phrase '*may be referred to the arbitration*', clearly shows that there is no binding Arbitration Agreement between the parties. Moreover, in view of the use of the word 'may', there is no clear intention of the parties to submit the disputes between them to arbitration.

6. Having heard learned counsels for the parties, this Court notes that it is a settled legal position that existence of a valid, written Arbitration Agreement, which shows the *ad idem* intention of the parties to submit to arbitration as the dispute resolution mechanism, is a *sine qua non* for referring the parties to arbitration.

7. Section 2(b) of the Arbitration Act defines an Arbitration Agreement to mean an Agreement referred to in Section 7 of the Arbitration Act. In terms of Section 7 of the Arbitration Act, an Arbitration Agreement is an agreement by and between the parties to submit to arbitration, all or certain disputes which have arisen or which may arise between them. Further, while



Section 7(2) of the Arbitration Act stipulates that an Arbitration Agreement may be in the form of Arbitration Clause in a contract or in the form of a separate agreement, Section 7(3) of the Arbitration Act clearly states that an Arbitration Agreement between the parties shall be in writing.

8. For the sake of convenience, Section 7 of the Arbitration Act is reproduced as under:

“xxx xxx xxx

7. Arbitration agreement:- (1) In this Part, **“arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.**

(2) **An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.**

(3) **An arbitration agreement shall be in writing.**

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

xxx xxx xxx”

(Emphasis Supplied)

9. Outlining the essential elements of an Arbitration Agreement, Supreme Court in the case of ***Bihar State Mineral Development Corporation and Another Versus ENCON Builders (I) (P) Ltd., (2003) 7 SCC 418***, has held as follows:

“xxx xxx xxx



13. The essential elements of an arbitration agreement are as follows:

(1) There must be a present or a future difference in connection with some contemplated affair.

(2) There must be the intention of the parties to settle such difference by a private tribunal.

(3) The parties must agree in writing to be bound by the decision of such tribunal.

(4) The parties must be ad idem.

xxx xxx xxx”

(Emphasis Supplied)

10. Underscoring that an Arbitration Agreement must necessarily include a clear intent to arbitrate and a binding adjudicatory process, Supreme Court in the case of *South Delhi Municipal Corporation of Delhi Versus SMS Limited, (2026) 1 SCC 545*, has held as follows:

“xxx xxx xxx

46. 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.

xxx xxx xxx”

(Emphasis Supplied)

11. Likewise, laying down the pre-requisites of a valid and binding Arbitration Agreement, Supreme Court in the case of ***Powertech World Wide Limited Versus Delvin International General Trading LLC, (2012) 1 SCC 361***, has held as follows:

“xxx xxx xxx

16. Now, I may refer to the prerequisites of a valid and binding arbitration agreement leading to an appropriate reference under the Act. Section 2(1)(b) defines “arbitration agreement” to be an agreement referred to in Section 7. Section 7 of the Act states that an “arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. The arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement and shall be an agreement in writing. An arbitration agreement is in writing if it is contained in any of the clauses i.e. clauses (a) to (c) of sub-section (4) of Section 7 of the Act. Once these ingredients are satisfied, there would be a binding arbitration agreement between the parties and the aggrieved party would be in a capacity to invoke the jurisdiction of this Court under Section 11(6) of the Act.

17. In *K.K. Modi v. K.N. Modi* [(1998) 3 SCC 573] this Court, while differentiating an “arbitration agreement” from a “reference to an expert” for decision, contained in an MoU recording a family settlement, enumerated the essential attributes of a valid arbitration agreement: (SCC p. 584, para 17)

“(1) The arbitration agreement must contemplate that the



decision of the tribunal will be binding on the parties to the agreement;

(2) that the jurisdiction of the tribunal to decide the rights of the parties must be derived either from the consent of the parties or from an order of the court or from a statute, the terms of which make it clear that the process is to be an arbitration;

(3) the agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal;

(4) that the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides;

(5) that the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly;

(6) the agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal.”

18. Also in *Smita Conductors Ltd. v. Euro Alloys Ltd.* [(2001) 7 SCC 728] where no contract, letter or telegram confirming the contract containing the arbitration clause as such was there, but certain correspondences which indicated a reference to the contract containing arbitration clause for opening the letter of credit addressed to the bank, were there. There was also no correspondence between the parties disagreeing either with the terms of the contract or the arbitration clause. **The two contracts also stood affirmed by reason of their conduct as indicated in the letters exchanged between the parties.** This Court construed it to be an arbitration agreement in writing between the parties and referred to Article II Para 2 of the New York Convention, which is in pari materia with Section 7 of the Act and observed as under: (*Smita Conductors Ltd. case* [(2001) 7 SCC 728], SCC pp. 734-35, para 6)

“6. What needs to be understood in this context is that the agreement to submit to arbitration must be in writing. What is an agreement in writing is explained by Para 2 of Article II. If we break down Para 2 into elementary parts, it consists of four aspects. It includes an arbitral clause (1) in a contract containing an arbitration clause signed by the parties, (2) an arbitration agreement signed by the parties, (3) an arbitral clause in a contract contained in exchange of letters or telegrams, and (4) an arbitral agreement contained in exchange of letters or telegrams. If an arbitration clause falls



in any one of these four categories, it must be treated as an agreement in writing.”

19. This Court, in *Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd.* [(2003) 7 SCC 418] has also taken the view that **the parties must agree in writing to be bound by the decision of such tribunal and they must be ad idem.**

xxx xxx xxx”

(Emphasis Supplied)

12. Emphasizing that the deficiency of words in an agreement, which otherwise fortifies the intention of the parties to arbitrate their disputes, cannot legitimize the annulment of an Arbitration Clause, Supreme Court in the case of ***Babanrao Rajaram Pund Versus Samarth Builders and Developers and Another, (2022) 9 SCC 691***, has held as follows:

“xxx xxx xxx

15. It may be seen that Section 7 of the Act does not mandate any particular form for the arbitration clause. This proposition was settled by this Court way back in *Rukmanibai Gupta v. Collector* [*Rukmanibai Gupta v. Collector, (1980) 4 SCC 556*], while viewing erstwhile Section 2(a) of the Arbitration Act, 1940 which contained the definition of “arbitration agreement”. It was held that: (SCC p. 560, para 6)

“6. ... Arbitration agreement is not required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if disputes arise between them in respect of the subject-matter of contract such dispute shall be referred to arbitration, then such an arrangement would spell out an arbitration agreement. A passage from Russell on Arbitration, 19th Edn., p. 59, may be referred to with advantage:

If it appears from the terms of the agreement by which a matter is submitted to a person's decision that the intention of the parties was that he should hold an inquiry in the nature of a judicial inquiry and hear the respective cases of the parties and decide upon evidence laid before him, then the case is one of an arbitration.”

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18. *Encon Builders* [*Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd., (2003) 7 SCC 418*] placed reliance on



K.K. Modi case [K.K. Modi v. K.N. Modi, (1998) 3 SCC 573] and further condensed the essential features of an arbitration agreement into four elements i.e. : (Encon Builders case [Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd., (2003) 7 SCC 418] , SCC p. 423, para 13)

“13. The essential elements of an arbitration agreement are as follows:

(1) There must be a present or a future difference in connection with some contemplated affair.

(2) There must be the intention of the parties to settle such difference by a private tribunal.

(3) The parties must agree in writing to be bound by the decision of such tribunal.

(4) The parties must be ad idem.”

xxx xxx xxx

23. Adverting to the case in hand, it may be seen that the contents and the nature of Clause 18 are substantially different from the dispute resolution pacts in *K.K. Modi [K.K. Modi v. K.N. Modi, (1998) 3 SCC 573]* , *Jagdish Chander [Jagdish Chander v. Ramesh Chander, (2007) 5 SCC 719]* , or *Encon Builders [Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd., (2003) 7 SCC 418]* . We say so for three reasons. **Firstly, apart from the fact that Clause 18 of the development agreement uses the terms “arbitration” and “arbitrator(s)”, it has clearly enunciated the mandatory nature of reference to arbitration by using the term “shall be referred to arbitration of a sole arbitrator mutually appointed, failing which, two arbitrators, one to be appointed by each party to dispute or difference”. Secondly, the method of appointing the third arbitrator has also been clearly mentioned wherein the two selected arbitrators are to appoint a third arbitrator. Finally, even the governing law was chosen by the parties to be “the Arbitration and Conciliation Act, 1996 or any re-enactment thereof.” These three recitals, strongly point towards an unambiguous intention of the parties at the time of formation of the contract to refer their dispute(s) to arbitration.**

24. We are, therefore, of the firm opinion that the High Court fell in error in holding that the appellant's application under Section 11 was not maintainable for want of a valid arbitration clause. We find that **Clause 18 luminously discloses the intention and obligation of the parties to be bound by the decision of the tribunal, even though the words “final and binding” are not expressly incorporated therein. It can be gleaned from other parts of the arbitration agreement that the intention of the parties was surely to refer the disputes to**



arbitration. In the absence of specific exclusion of any of the attributes of an arbitration agreement, the respondents' plea of non-existence of a valid arbitration clause, is seemingly an afterthought.

25. Even if we were to assume that the subject clause lacks certain essential characteristics of arbitration like “final and binding” nature of the award, the parties have evinced clear intention to refer the dispute to arbitration and abide by the decision of the tribunal. The party autonomy to this effect, therefore, deserves to be protected.

26. **The deficiency of words in agreement which otherwise fortifies the intention of the parties to arbitrate their disputes, cannot legitimise the annulment of arbitration clause.** A three-Judge Bench of this Court in *Enercon (India) Ltd. v. Enercon GmbH* [*Enercon (India) Ltd. v. Enercon GmbH*, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59] dealt with an arbitration clause that did not provide for a method of electing the third arbitrator. The Court held that “the omission is so obvious that the court can legitimately supply the missing line.” The line “the two arbitrators appointed by the parties shall appoint the third arbitrator” was read into the clause so as to give effect to it. It was further held that: (SCC p. 39, para 88)

“88. **In our opinion, the courts have to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or construing an arbitration agreement or arbitration clause. Therefore, when faced with a seemingly unworkable arbitration clause, it would be the duty of the court to make the same workable within the permissible limits of the law, without stretching it beyond the boundaries of recognition. In other words, a common sense approach has to be adopted to give effect to the intention of the parties to arbitrate. In such a case, the court ought to adopt the attitude of a reasonable business person, having business common sense as well as being equipped with the knowledge that may be peculiar to the business venture. The arbitration clause cannot be construed with a purely legalistic mindset, as if one is construing a provision in a statute.**”

xxx xxx xxx”

(Emphasis Supplied)

13. Applying the settled principles of law, as noted hereinabove, it has to be construed whether the Clause in the present case constitutes a valid and binding Arbitration Agreement between the parties. Clause 29, containing the dispute resolution clause in the present case, firstly, mandates resolution



of disputes through amicable discussion. In the event the parties are unable to resolve their disputes by amicable discussion, the parties will be free to avail their legal remedies. The said Clause further proceeds to record that in the event of the parties being unable to resolve the disputes by amicable discussion, the disputes may be referred to arbitration, in terms as elucidated in sub-clause (d) of the said Clause.

14. It is further to be seen that the dispute resolution clause in the present case, after recording that the disputes may be referred to arbitration, has detailed the procedure for conduct of the arbitration in sub-clause (d), which clearly stipulates that the arbitration award shall be final and binding on the parties. Further, the said sub-clause also lays down the venue and seat of the arbitral tribunal.

15. Therefore, it is apparent that in the present case, there is a clear intent of the parties to resolve the disputes through arbitration. The dispute resolution clause is also in compliance with the norms of arbitration and contemplates a binding adjudicatory mechanism.

16. Such intent of the parties is manifest from a holistic reading of the dispute resolution clause (Clause 29), which elucidates the specific and elaborate terms and procedure agreed upon between the parties for conduct of arbitration. At the cost of repetition, it is noted that the parties have agreed that they shall be bound by the arbitral award and shall act in accordance with the same. The parties have further agreed upon the language of the proceedings, as well as the liability of the party to pay cost and expenses of the proceedings to be undertaken.

17. The dispute resolution clause, by elucidating the detailed procedure for conduct of arbitration and using the terminology that, 'arbitration shall



be conducted as follows’, as also by stipulating the governing law and making the arbitration award final and binding on the parties, strongly points towards the unambiguous intention of the parties to refer the disputes to arbitration.

18. Mere use of the prefix ‘may’, which is followed by a detailed binding adjudicatory mechanism, shall not make the dispute resolution clause in the present case as a non-binding Arbitration Clause. Thus, a comprehensive, harmonious and wholesome construction of Clause 29 makes clear the intent of the parties to refer the disputes to arbitration, in the eventuality the same are not resolved amicably.

19. Accordingly, *prima facie*, all the pre-requisites of a valid and binding Arbitration Agreement are fulfilled in the present case and it is manifest that the dispute resolution clause contemplates settlement of the disputes between the parties through the process of arbitration.

20. In this regard, reference may be made to the judgment in the case of *Mahanagar Telephone Nigam Limited Versus Canara Bank and Others*, (2020) 12 SCC 767, wherein, the Supreme Court laid down that an Arbitration Agreement between the parties must be understood and interpreted in terms of the intention between the parties. Furthermore, in interpreting or construing an Arbitration Agreement, it would be the duty of the Court to make the same workable within the permissible limits of the law. Thus, it was held as follows:

“xxx xxx xxx

9. A valid arbitration agreement constitutes the heart of an arbitration. An arbitration agreement is the written agreement between the parties, to submit their existing, or future disputes or differences, to arbitration. A valid arbitration agreement is the foundation stone on which the entire edifice of the arbitral process



is structured. A binding agreement for disputes to be resolved through arbitration is a sine qua non for referring the parties to arbitration.

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9.2. *The arbitration agreement need not be in any particular form. What is required to be ascertained is the intention of the parties to settle their disputes through arbitration. **The essential elements or attributes of an arbitration agreement is the agreement to refer their disputes or differences to arbitration, which is expressly or impliedly spelt out from a clause in an agreement, separate agreement, or documents/correspondence exchanged between the parties.***

9.3. *Section 7(4)(b) of the 1996 Act, states that an arbitration agreement can be derived from exchange of letters, telex, telegram or other means of communication, including through electronic means. The 2015 Amendment Act inserted the words “including communication through electronic means” in Section 7(4)(b). If it can prima facie be shown that parties are ad idem, even though the other party may not have signed a formal contract, it cannot absolve him from the liability under the agreement [Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia (P) Ltd., (2015) 13 SCC 477 : (2016) 1 SCC (Civ) 733].*

9.4. **Arbitration agreements are to be construed according to the general principles of construction of statutes, statutory instruments, and other contractual documents. The intention of the parties must be inferred from the terms of the contract, conduct of the parties, and correspondence exchanged, to ascertain the existence of a binding contract between the parties. If the documents on record show that the parties were ad idem, and had actually reached an agreement upon all material terms, then it would be construed to be a binding contract. The meaning of a contract must be gathered by adopting a common sense approach, and must not be allowed to be thwarted by a pedantic and legalistic interpretation.** [Union of India v. D.N. Revri & Co., (1976) 4 SCC 147]

9.5. **A commercial document has to be interpreted in such a manner so as to give effect to the agreement, rather than to invalidate it. An “arbitration agreement” is a commercial document inter partes, and must be interpreted so as to give effect to the intention of the parties, rather than to invalidate it on technicalities.**

9.6. *In Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd. [Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd., (1963) 3 SCR 183 : AIR 1962 SC 1810] , this Court while ascertaining the terms of an arbitration agreement between the parties, held that: (AIR p. 1820,*



para 30)

“30. ... If on a reading of the document as a whole, it can fairly be deduced from the words actually used therein, that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term. The terms of a contract can be express or implied from what has been expressed. It is in the ultimate analysis a question of construction of the contract.”

(emphasis supplied)

9.7. In interpreting or construing an arbitration agreement or arbitration clause, it would be the duty of the court to make the same workable within the permissible limits of the law. This Court in Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] , held that a common sense approach has to be adopted to give effect to the intention of the parties to arbitrate the disputes between them. Being a commercial contract, the arbitration clause cannot be construed with a purely legalistic mindset, as in the case of a statute.

xxx xxx xxx”

(Emphasis Supplied)

21. Similarly, holding that Courts must adopt a pragmatic and commercially efficacious approach to uphold and operationalise Arbitration Clauses, ensuring that intention to arbitrate is not defeated merely due to inartistic drafting or apparent un-workability, Supreme Court in the case of ***Enercon (India) Limited and Others Versus Enercon GMBH and Another, (2014) 5 SCC 1***, has held as follows:

“xxx xxx xxx

88. In our opinion, the courts have to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or construing an arbitration agreement or arbitration clause. Therefore, when faced with a seemingly unworkable arbitration clause, it would be the duty of the court to make the same workable within the permissible limits of the law, without stretching it beyond the boundaries of recognition. In other words, a common sense approach has to be adopted to give effect to the intention of the parties to arbitrate. In such a case, the court ought to adopt the attitude of a reasonable business person, having business common sense as well as being equipped with the knowledge that may be



peculiar to the business venture. The arbitration clause cannot be construed with a purely legalistic mindset, as if one is construing a provision in a statute. We may just add here the words of Lord Diplock in *Antaios Compania Naviera S.A. v. Salen Rederierna A.B.* [1985 AC 191 : (1984) 3 WLR 592 : (1984) 3 All ER 229 (HL)] , which are as follows: (AC p. 201 E)

“... if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense.”

We entirely agree with the aforesaid observation.

89. This view of ours is also supported by the following judgments which were relied upon by Dr Singhvi:

89.1. *In Visa International Ltd.* [*Visa International Ltd. v. Continental Resources (USA) Ltd.*, (2009) 2 SCC 55 : (2009) 1 SCC (Civ) 379], it was *inter alia* held that: (SCC pp. 64-65, paras 25-26)

“25. ... No party can be allowed to take advantage of inartistic drafting of arbitration clause in any agreement as long as clear intention of parties to go for arbitration in case of any future disputes is evident from the agreement and material on record including surrounding circumstances.

26. What is required to be gathered is the intention of the parties from the surrounding circumstances including the conduct of the parties and the evidence such as exchange of correspondence between the parties.”

89.2. Similar position of law was reiterated in *Nandan Biomatrix Ltd.* [*Nandan Biomatrix Ltd. v. D1 Oils Ltd.*, (2009) 4 SCC 495: (2009) 2 SCC (Civ) 227], wherein this Court observed *inter alia* as under: (SCC pp. 501-02, paras 28-30)

“28. This Court in *Rukmanibai Gupta v. Collector* [(1980) 4 SCC 556] has held (at SCC p. 560, para 6) that what is required to be ascertained while construing a clause is

‘whether the parties have agreed that if disputes arise between them in respect of the subject-matter of contract such dispute shall be referred to arbitration, then such an arrangement would spell out an arbitration agreement’.

29. In *M. Dayanand Reddy v. A.P. Industrial Infrastructure Corpn. Ltd.* [(1993) 3 SCC 137] this Court has held that: (SCC p. 142, para 8)



‘8. ... an arbitration clause is not required to be stated in any particular form. If the intention of the parties to refer the dispute to arbitration can be clearly ascertained from the terms of the agreement, it is immaterial whether or not the expression arbitration or “arbitrator” or “arbitrators” has been used in the agreement.’

30. The Court is required, therefore, to decide whether the existence of an agreement to refer the dispute to arbitration can be clearly ascertained in the facts and circumstances of the case. This, in turn, may depend upon the intention of the parties to be gathered from the correspondence exchanged between the parties, the agreement in question and the surrounding circumstances. What is required is to gather the intention of the parties as to whether they have agreed for resolution of the disputes through arbitration. What is required to be decided in an application under Section 11 of the 1996 Act is: whether there is an arbitration agreement as defined in the said Act.”

(emphasis in original)

90. It is a well-recognised principle of arbitration jurisprudence in almost all the jurisdictions, especially those following the UNCITRAL Model Law, that the courts play a supportive role in encouraging the arbitration to proceed rather than letting it come to a grinding halt. Another equally important principle recognised in almost all jurisdictions is the least intervention by the courts. Under the Indian Arbitration Act, 1996, Section 5 specifically lays down that:

“5.Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

Keeping in view the aforesaid, we find force in the submission of Dr Singhvi that the arbitration clause as it stands cannot be frustrated on the ground that it is unworkable.

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96. Similarly, other provisions contained in Sections 8, 11 and 45 of the Indian Arbitration Act, 1996 are machinery provisions to ensure that parties can proceed to arbitration provided they have expressed the intention to arbitrate. This intention can be expressed by the parties, as specifically provided under Section 7 of the Indian Arbitration Act, 1996 by an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement. Such intention can even be expressed in the pleadings of the parties such as statements of claim and defence, in which the



existence of the agreement is alleged by one party and not denied by the other. In view of the above, we are of the opinion that the parties can be permitted to proceed to arbitration.

xxx xxx xxx”

(Emphasis Supplied)

22. In regard to interpretation of contracts/clauses, this Court also notes the judgment in the case of ***Infrastructure Leasing and Financial Services Ltd. Versus HDFC Bank Ltd. and Another, 2023 SCC OnLine SC 1371***, wherein, the Supreme Court has succinctly recapitulated the principles of interpretation of contract, and held that it is the effect of all the terms of the document, which brings out the true purport and intention of the parties. The relevant portion of the aforesaid judgment, is extracted as follows:

“xxx xxx xxx

29. **The effect of these documents is what the court is concerned with. It is a known principle of contract interpretation, that the substance of a document, is discernible from its terms, rather than the label or its nomenclature.** In *Yellapu Uma Maheswari v. Buddha Jagadheeswararao* [(2015) 11 SCR 849], the court held:

“It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question.”

30. In *Assam Small Scale Ind. Dev. Corp. Ltd. v. J.D. Pharmaceuticals* [2005 Supp (4) SCR 232] the court stated as follows:

“The nature of transaction is required to be determined on the basis of the substance there and not by the nomenclature used. Documents are to be construed having regard to the contexts thereof wherefor ‘labels’ may not be of much relevance.”

31. This was also stated in *V. Lakshmanan v. B.R. Mangalagiri* [1994 Supp (6) SCR 561] (that the “nomenclature or label given in the agreement as advance is not either decisive or immutable.”). This principle of substance, over the form, was followed in *Super Poly*



Fabriks Ltd. v. Commissioner of Central Excise, Punjab [(2008) 6 SCR 1076].

32. That one document is styled or described in a certain manner, or that it uses a certain expression, or term is not conclusive; it is the effect of all the terms, of the documents, which bring out the true purport and intention of the parties. Likewise, another allied principle of contract interpretation, is that where the transaction is not the subject of one document, but several, which refer to each other, or a reading of all, describe the entire contract, then, it is open to the court to consider all of them together. This principle was stated in *S. Chattanatha Karayalar v. The Central Bank of India* wherein this court held that:

*“The principle is well-established that if the transaction is contained in more than one document between the same parties they must be read and interpreted together and they have the same legal effect for all purposes as if they are one document. In *Manks v. Whiteley*, [1912] 1 Ch. 735 Moulton, L.J. stated:*

“Where several deeds form part of one transaction and are contemporaneously executed they have the same effect for all purposes such as are relevant to this case as if they were one deed. Each is executed on the faith of all the others being executed also and is intended to speak only as part of the one transaction, and if one is seeking to make equities apply to the parties they must be equities arising out of the transaction as a whole.”

xxx xxx xxx”

(Emphasis Supplied)

23. In the light of the above discussion, this Court is of a *prima facie* view that the intention of the parties to resolve their disputes by way of arbitration is palpable from a bare reading of the dispute resolution clause governing the parties. Consequently, Clause 29 of the Agreement between the parties is held to be a valid Arbitration Clause, which is binding on the parties before this Court.

24. The judgments relied upon by the respondent are clearly distinguishable, as the dispute resolution clause contained in the said judgments are distinct and entirely different from the dispute resolution



clause existing in the present case. Besides, in the present case, the parties have already agreed upon the terms of arbitration at length, unlike in the cases as relied upon by the respondent, wherein the terms of conduct of arbitration had been left to be determined at a later stage.

25. Though the dispute resolution clause in the present case envisages amicable discussion between the parties, however, it is a settled legal position that any pre-arbitral mechanism making it obligatory to seek resolution of disputes through mediation, conciliation or the like, is directory and not mandatory. (*See: Hindustan Unilever Limited Versus Jagdeesh Kumar Sole Proprietor of Hari Ram Dharam Pal, 2024 SCC OnLine Del 7522*)

26. Accordingly, there is no impediment before this Court in appointing an arbitrator. Since the petitioner herein has already invoked the Arbitration Clause, this Court proceeds to appoint an arbitrator in terms of the Clause 29 between the parties.

27. Considering the submissions made before this Court, following directions are issued:

- i. Mr. Amrit Pal Gambhir, Advocate, (Mobile No.: +91-9810082347 and +91-9999983935) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii. The remuneration of the Arbitrator shall be in terms of Schedule IV of the Arbitration Act.
- iii. The Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration Act prior to entering into the reference. In the event, there is any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application



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before this Court.

- iv. It shall be open to the respondent to raise counter-claims, if any, in the arbitration proceedings.
 - v. It is made clear that all the rights and contentions of the parties, including, the arbitrability of any of the claims and/or counter-claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.
 - vi. The parties shall approach the Arbitrator within two (2) weeks, from today.
28. It is made clear that this Court has not expressed any opinion on the merits of the case.
29. The petition is disposed of in the aforesaid terms.
30. The Registry is directed to send a copy of this order to the learned Sole Arbitrator, for information and compliance.

**MINI PUSHKARNA
(JUDGE)**

APRIL 10, 2026
Kr/Au/Ak/Sk