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

+ ARB.P. 1260/2025 and I.A. 20389/2025

Date of Decision: **21.08.2025**

IN THE MATTER OF:

**M/S. GOKUL AGRI INTERNATIONAL
LIMITED,
GOKUL HOUSE, BLOCK-A, GOKUL
PRATHAM, BESIDES SW A BUNGLOWS,
NR. TAPOVAN CIRCLE,
T.P-44, CHANDKHEDA, AHMEDABAD,
GUJARAT-382424**

....Petitioner

(Through: Mr.Ashish Khorana (Thr. VC).)

versus

**UNION OF INDIA
THROUGH
ARMY PURCHASE ORGANIZATION,
ROOM NO. 313, 'C' WING, SENA BHAWAN,
DIRECTORATE GENERAL OF SUPPLIES AND TRANSPORT,
IHQ OF MOD(ARMY) /OMG'S BRANCH,
DHQ PO, NEW DELHI - 110001**

....Respondent

*(Through: Mr. Anshuman, SPC with Mr. Vidur Dwivedi and Mr.
Karan Rawal, Adv.)*

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

Heard learned counsel for the petitioner who seeks for appointment of the Arbitrator in terms of Section 11 of the Arbitration and Conciliation Act,



1996 (*hereinafter referred to as 'the A&C Act'*)

2. The facts of the case would indicate that the responded awarded three contracts to the petitioner for the supply of 1440 MT of refined sunflower oil secured by Bank Guarantee of Rs. 82,96,398/-. Of the three contracts, one contract was completed. According to the petitioner, the related Bank Guarantee was not released.

3. Learned counsel for the petitioner takes this Court through Clause 3 of the agreement dated 30.05.2024 and 31.05.2024 and contends that in view of the subsisting arbitration clause, the Arbitrator is required to be appointed who shall deal with the dispute which has arisen in the instant petition. For the sake of clarity, Clause 3 of the agreement is extracted as under:

“Clause 3 - All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the contract or relating to construction or performance, which cannot be settled amicably, may be resolve through Arbitration. The standard clause of arbitration is as per Forms DPM-7and DPM-9 (Available on MoD -Website and can be provided on request). The arbitrator will be appointed by the Competent Financial Authority (CFA) and it will be binding on both the parties.”

4. A careful perusal of aforesaid Clause makes it clear that the words ‘*may be resolved through arbitration*’ is used.

5. The Supreme Court in the case of **BGM and M-RPL-JMCT (JV) vs. Eastern Coalfields Limited**¹ has held the clause therein 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 mandatorily have to seek settlement of dispute(s) through arbitration. If such words are used in an agreement, it is just an enabling clause whereunder, if parties agree, they could resolve their



dispute(s) through arbitration. The relevant paragraph of the aforementioned decision is extracted as under:-

“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 where under, 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.”

6. At this stage, it is also pertinent to compare the arbitration clause here and the clause therein which was under consideration in the Supreme Court.

A comparative table of the aforesaid two clauses is given as under:-

<i>In BGM & M-RPL-JMCT JV v. ECL</i>	<i>In the present case</i>
<i>Clause 13. SETTLEMENT OF DISPUTES It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the company level. The contractor should make request in writing to the Engineer-in-charge for settlement of such disputes/claims within 30 (thirty) days of arising of the cause of dispute/ claim failing which no disputes/ claims of the contractor shall be entertained by the company. Effort shall be made to resolve the dispute in two stages. In first stage dispute shall be referred to Area CGM, GM. If difference still persist the dispute shall be referred to a committee constituted by the owner. The Committee shall have one member of the rank of</i>	<i>Clause 3 - All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the contract or relating to construction or performance, which cannot be settled amicably, <u>may be resolve through Arbitration.</u> The standard clause of arbitration is as per Forms DPM-7and DPM-9 (Available on MoD -Website and can be provided on request). The arbitrator will be appointed by the Competent Financial Authority (CFA) and it will be binding on both the parties</i>

¹ 2025 INSC 874



Director of the company who shall be chairman of the company.

If differences still persist, the settlement of the dispute shall be resolved in the following manner:

In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments/ Organizations (excluding disputes concerning railways, Income Tax, Customs & 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.

*In case of parties other than Govt. Agencies, the redressal of the dispute **may be sought through ARBITRATION AND CONCILIATION ACT, 1996 as amended by AMENDMENT ACT OF 2015***

7. A perusal of both clauses reflects a common framework where disputes are first referred to another dispute resolution mechanism before arbitration is considered. Clause 3, i.e., the clause under consideration herein, mandates bilateral discussions as the first step, and only if such attempts fail, disputes may proceed to arbitration under standard MoD procedures. In both clauses, the invocation of arbitration is voluntary, a secondary avenue of redressal, and not the immediate, binding course of action.

8. Thus, it is trite law that use of the word may indicates that the nature of the arbitration clause is not mandatory but voluntary.

9. Thus, under these circumstances, as the controversy has already been



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settled by the Supreme Court, the Court is not inclined to appoint the Arbitrator as the aforesaid Clause in question is not mandatory and same is an option to the parties.

10. Accordingly, the petition stands dismissed along with pending application.

11. The petitioner shall, however, be at liberty to take any other remedy, if available in law.

**PURUSHAINDRA KUMAR KAURAV
(JUDGE)**

AUGUST 21, 2025
aks/mj