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

% *Date of Decision: 26th November, 2025*

\+ ARB.P. 559/2025

JHANKAR BANQUETS THROUGH ITS PARTNER MR. MAHESH KAPOOR .....Petitioner

Through: Mr. Ravi Gupta and Mr. Ankit Jain, Senior Advocates with Mr. Aditya Chauhan and Ms. Muskaan Mehra, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY .....Respondent

Through: Mr. Sanjay Vashishtha, Mr. Siddhartha Goswami, Ms. Geetanjali Reddy and Mr. Aditya Sachdeva, Advocates.

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CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. These petitions are filed on behalf of the Petitioner under Section 11(5) and (6) read with Section (6A) of the Arbitration and Conciliation Act,

1996 ('1996 Act') for appointment of Arbitrator to adjudicate the disputes between the parties.

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2. Petitioner is a Partnership Firm running its business under the name 'Jhankar Banquets'. DDA/Respondent decided to lease out the Tower Restaurant vide Resolution No. 50/93 dated 23.03.1993 on leasehold basis for a period of 30 years, including adjoining area which was to be given on licence basis for holding social functions, including marriages etc. Petitioner avers that DDA assured that running of the Tower Restaurant was permissible as all necessary permissions had been obtained and that there was no impediment in running the Restaurant since the structure was fit for obtaining No Objection Certificate ('NOC') from the Fire Service Department.

3. It is stated in the petition that considering the unique nature of the Restaurant, Petitioner participated in the bid process and submitted the bid, which was accepted by DDA on 20.11.1996 and Petitioner deposited Rs.75,00,000/- as security deposit. On 02.12.1996, DDA demanded a sum of Rs.1,82,00,000/- from the Petitioner after adjusting the security deposit, which too was deposited and physical possession of the Tower Restaurant along with adjoining area was handed over to the Petitioner on 19.07.1997. Subsequently, a Lease Deed was executed in favour of the Petitioner on 24.12.1999 for 30 years in respect of the Tower Restaurant, followed by execution of Licence Deed and Petitioner paid an amount of Rs.2,20,00,000/- as lease rent for the entire 30 year period in 1997 itself.

4. It is stated that after taking over possession, Petitioner took several steps to operationalise the Tower Restaurant at the earliest, which included installation of air conditioners, appliances, gadgets and kitchen equipment

etc. and incurred an approximate expenditure of Rs.2,50,00,000/-. Later, Petitioner realized that DDA had failed to disclose crucial facts relating to the subject property such as pendency of writ petition in this Court being CWP No. 1657/1993 filed by Asiad Village Society, claiming that the entire area of Tower Restaurant with adjoining area fell within the land allotted to the Society. After 18 years of protracted litigation, the writ petition was dismissed observing that the Society had no right of exclusive control and its role was limited to providing assistance to local authorities. Petitioner was constrained to contest another writ petition being W.P.(C) 3319/2002 filed by one Sh. V.P. Singh alleging that lease and licence was in violation of the Master Plan, which was disposed of by the Court observing that the Tower Restaurant had been in existence before the 1992 Notification and fell within the purview of 1962 Master Plan. DDA concealed another crucial fact that there was extensive seepage in the tower due to overhead water tank which was source of water supply to residents within the Asiad Village.

5. It is stated that through multiple communications, Petitioner requested DDA to fulfil its contractual obligations and take necessary measures so that the Restaurant could be run, but to no avail and Petitioner filed W.P.(C) 4776/2000, wherein Court directed DDA to rectify all defects within 6 months. Resultantly, Petitioner was unable to commercialize the Restaurant premises till 2005. Yet another challenge came by due to DDA's failure to fulfil its obligation of obtaining NOC from the Fire Service Department and it was a shocking revelation that before or at the time of construction of the Tower Restaurant, DDA had not complied with some of the Building Bye-laws and this triggered filing of W.P.(C) 11984/2009. This issue was resolved by the Court permitting the Petitioner to apply for a fresh NOC, vide order dated 09.02.2010.

6. It is averred that in 2010, Monitoring Committee sealed the entire premises and it was only on 22.04.2014 that the premises was de-sealed. This was followed by a petition filed before National Green Tribunal being O.A. No. 60/2014 alleging that the subject premises could not have been leased out being part of a District Park. By order dated 10.07.2015, NGT restricted the user of the premises to 10 days in a month and also directed that the adjoining area could only be used conjointly with the Tower Restaurant. On 28.05.2019, Monitoring Committee again sealed the entire premises and finally after approaching the Judicial Committee, de-sealing was done, pursuant to order dated 16.02.2023.

7. It is thus the case of the Petitioner that owing to the acts of omission and commission of DDA and its non-disclosure of vital facts as also non-fulfilment of its mandatory obligations, Petitioner was unable to utilize the demised premises and suffered substantial monetary loss. Petitioner paid over Rs.2 crores at the initial stage and claims that the value of money is over Rs.51 crores as on 31.10.2024 which includes accrued interest. Substantial expenditure was also incurred on repairs/renovation and payment of Stamp Duty. While on one hand, Petitioner was unable to operate the Tower Restaurant, on the other hand DDA kept demanding annual ground rent, which the Petitioner regularly paid @ Rs.3,30,000/- per annum from 1998 to 2024 and this resulted in huge monetary loss to the Petitioner. Disputes having arisen between the parties, Petitioner invoked Clause 21 of the Lease Deed dated 24.12.1999 and sent notice dated 05.12.2024 to DDA to consent to appointment of an Arbitrator, but there was no response.

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8. This petition pertains to Licence Deed dated 08.08.2018 executed by

DDA in favour of the Petitioner for the area adjoining the Tower Restaurant. The licence fee was fixed at Rs.31,00,000/- per annum with increase of 20% every three years. The basic amenities were also not provided by DDA in this area and Petitioner was unable to utilize the area until 2001. Petitioner incurred expenditure towards renovation and upkeep of the area. Due to multiple litigations, as aforementioned, the area could not be utilized but despite this DDA issued Demand Notice demanding Rs.81,12,925.40/- towards licence fee and maintenance charges *albeit* the same was reduced to Rs.18,42,925.40/- vide communication dated 15.09.2016 and the said amount was paid by the Petitioner on 30.09.2016 under protest. On 30.05.2019, Monitoring Committee sealed the entire premises, which was finally de-sealed on 23.02.2023, pursuant to order dated 16.02.2023 passed by Judicial Committee. Petitioner has suffered a loss of Rs.38,05,29,815/- due to inaction of DDA and is thus entitled to reimbursement of the money as also renewal of the Licence Deed for a period of 30 years from the date of execution of fresh Licence Deed. Disputes having arisen, Petitioner invoked Clause 19 of the Licence Deed and sent notice dated 05.12.2024 asking DDA to consent to appointment of an Arbitrator, but there was no response.

9. Mr. Sanjay Vashishtha, learned counsel for DDA takes preliminary objection to appointment of an Arbitrator on two-fold grounds. The first ground is that the Lease Deed and Licence Deed do not contain an arbitration agreement. Section 7 of 1996 Act provides the ingredients of an arbitration agreement and reads *"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"*. To be an arbitration agreement, the agreement must evidence a clear intent of the parties to refer the disputes to arbitration leaving no doubt

that parties have chosen arbitration as their only mode of dispute resolution *albeit* it is true that absence of words like 'arbitration' or 'Arbitrator' may not necessarily lead to a conclusion that parties did not intend to take recourse to arbitration. Clauses 21 and 19 in the Lease Deed and Licence Deed respectively, cannot be construed as arbitration agreements and at the highest these clauses empower the Vice Chairman ('VC'), DDA to take an administrative decision on his own without the parties referring the disputes, being the highest authority in DDA in the hierarchy. These clauses do not even remotely suggest that parties intended that VC will exercise adjudicatory power as an arbitrator or that arbitration will be the dispute resolution mechanism for disputes and differences arising from the Lease and Licence Deeds. Clauses 21 and 19 cannot be construed as valid arbitration agreements and *sans* an arbitration agreement, existence of which is a *sine qua non* for reference of disputes to arbitration under Section 11 of 1996 Act, arbitrator cannot be appointed. To support to this plea, reliance was placed on the following judgments:-

i. ***Registrar, University of Agricultural Science v. G.G. Hosamath, (2004) 13 SCC 542;***
ii. ***South Delhi Municipal Corporation of Delhi v. SMS Limited, 2025 SCC Online SC 1138;***
iii. ***State of Orissa and Others v. Bhagyadhar Dash, (2011) 7 SCC 406;***
iv. ***Smt. Rukmanibai Gupta v. Collector, Jabalpur and Others, (1980) 4 SCC 556;***
v. ***Pride of Asia Films v. Essel Vision, 2003 SCC Online Bom 1096;*** and
vi. ***Jagdish Chander v. Ramesh Chander and Others, (2007) 5 SCC 719.***

10. The second and the only other objection was that even assuming that

there are valid arbitration agreements governing the Lease and Licence Deeds, the disputes sought to be raised by the Petitioner are non-arbitrable. Petitioner's purported claims primarily revolve around alleged monetary loss caused due to non-disclosure of pending litigation; structural issues such as seepage from overhead water tank and non-compliance with some Byelaws relating to staircase etc.; failure to obtain NOC from Fire Department; sealing of premises by Monitoring Committee as also restrictions imposed by National Green Tribunal; illegal demand of ground rent; and loss of revenue as premises could not be put to commercial use for several years from the date of execution of Lease and Licence Deeds. Clauses 21 and 19 refer to disputes and differences *"arising under these presents, or in connection therewith"* and cannot be extended to disputes pertaining to external factors such as litigation by third parties, actions by Monitoring Committee etc. and thus being outside the scope of contractual obligations, the alleged claims/disputes fall outside the purported arbitration agreements. In ***Vidya Drolia and Others v. Durga Trading Corporation, (2021) 2 SCC 1***, the Supreme Court held that disputes involving actions of third parties/public authorities, which are not parties to arbitration agreement, are non-arbitrable.

11. Responding to the first preliminary objection that there are no valid arbitration agreements in the Lease and Licence Deeds, learned Senior Counsels for the Petitioner argued that Clause 21 of Lease Deed dated 24.12.1999 fulfils all ingredients of Section 7 of 1996 Act, inasmuch it provides for reference of disputes for adjudication to VC, DDA, empowering him to take a decision, which would be final and binding on both the parties and the agreement is in writing. It was, however, fairly submitted that in light of the judgment of the Supreme Court in ***Perkins***

Eastman Architects DPC and Another v. HSCC (India) Limited, (2020) 20 SCC 760, the Arbitrator be appointed by the Court. Similarly, Clause 19 of the Licence Deed dated 08.08.2018 makes it clear that parties intended to refer their disputes to arbitration and the decision of VC, DDA was to be final and binding. Existence of Arbitration Agreements is also evident from use of the words *"In the event of any question, dispute or difference"* and *"adjudicate.",* which ordinarily appear in the customary arbitration clauses. Parties intended that finality be attached to the decision and this is substantiated by the words *"shall be final and binding on the parties"* and both the Deeds were signed by the parties out of their own free will.

12. It was argued that case of the Petitioner is fully covered by the judgment of the Supreme Court in ***Punjab State and Others v. Dina Nath, (2007) 5 SCC 28,*** where the Supreme Court was dealing with a similar clause providing that any dispute arising between the department and the contractor shall be referred to the Superintending Engineer ('SE') for orders and his decision will be final and acceptable or binding on both parties. After referring to definition of *"arbitration agreement"* in Section 2(b) of 1996 Act and earlier judgments, it was held by the Supreme Court that the said Clause constituted an arbitration agreement. It was observed that the use of words *"any dispute"* in Clause 4 of the Work Order implied that it was wide enough to include all disputes relating to the Work Order and the word *"orders"* would indicate some expression of opinion and conclusion of SE, which could be enforced. Moreover, the clause provided that the decision was binding on the parties. Reliance was also placed on the judgment of the Supreme Court in ***Smt. Rukmanibai Gupta (supra)*** and of this Court in ***Pure Diets India Limited v. Lokmangal Agro Industries Ltd., 2023 SCC OnLine Del 4486,*** where it was held that language of the

purported arbitration clause must evidence an unambiguous, explicit and unequivocal intention to refer the disputes to arbitration, the main attribute of an arbitration agreement being *consensus ad idem* between the parties that arbitration will the dispute resolution mechanism. In this backdrop, it was urged that the Arbitrator be appointed by this Court since there exist valid arbitration agreements in the Lease and Licence Deeds, respectively. On the second objection, it was urged that it is trite that arbitrability of disputes cannot be decided in a petition under Section 11 of 1996 Act and is the domain of the Arbitral Tribunal.

13. Heard learned Senior Counsels for the Petitioner and learned counsel for DDA.

14. The only question that arises for consideration before this Court is whether Clauses 21 and 19 in the Lease and Licence Deeds respectively, can be construed as arbitration agreements. It needs no reiteration that while exercising power under Section 11 of 1996 Act, Referral Court must confine judicial determination to examining whether there exists a valid arbitration agreement and whether the petition is within the period of limitation prescribed under Article 137 of the Limitation Act, 1963. ***[Ref.: SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754].*** Before proceeding further, it will be useful to refer to the two clauses in question and the same are extracted hereunder for ready reference:-

> ***Lease Deed***
>
> ***Clause 21***
>
> *"21 In the event of any question, dispute or difference arising under these presents, or in connection therewith (except as to any matters the decision of which is specially provided by these presents) between the Lessor and the Lessee and the decision of V.C., DDA shall be final and binding end shall not be called in question, in any proceedings on any ground whatsoever."*

Licence Deed

Clause 19

"19. That in case of any dispute arising between the Licensor and the Licensee in respect of the interpretation or performance of any terms or conditions of this License, the decision of Vice-Chairman of the DDA there on shall be final and binding on both the parties. The Licensee shall not object to the Vice-Chairman of Delhi Development Authority's decision on the ground that he had dealt with case or has at some stage expressed opinion in any matter connected therewith or on any grounds whatsoever."

15. Section 2(b) of 1996 Act defines *"arbitration agreement"* to mean an agreement referred to in Section 7 of 1996 Act. Plain reading of Section 7 leaves no doubt that to constitute arbitration agreement, the agreement must reflect an intention of the parties to enter into an agreement to refer the disputes arising between them to arbitration. The agreement must be in writing and must also indicate that parties intended to treat the decision of the Arbitrator as final and binding. Pithily put, the attributes/ingredients of an arbitration agreement are: (a) it should be in writing; (b) parties must agree to refer the disputes to the decision of an Arbitrator, who is empowered to adjudicate the disputes; and (c) parties should be *ad idem* that the decision of the Arbitrator will be final and bind them. In this context, I may allude to the judgment of the Supreme Court in ***K.K. Modi v. K.N. Modi and Others, (1998) 3 SCC 573***, where the Supreme Court delineated the attributes of an arbitration agreement and relevant paragraphs are as follows:—

"17. Among the attributes which must be present for an agreement to be considered as an arbitration agreement are:

(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 parties must derive 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.

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19. In Russell on Arbitration, *21st Edn., at p. 37, para 2-014, the question how to distinguish between an expert determination and arbitration, has been examined. It is stated,*

"Many cases have been fought over whether a contract's chosen form of dispute resolution is expert determination or arbitration. This is a matter of construction of the contract, which involves an objective enquiry into the intentions of the parties. First, there are the express words of the disputes clause. If specific words such as 'arbitrator', 'arbitral tribunal', 'arbitration' or the formula 'as an expert and not as an arbitrator' are used to describe the manner in which the dispute resolver is to act, they are likely to be persuasive although not always conclusive…. Where there is no express wording, the court will refer to certain guidelines. Of these, the most important used to be, whether there was an 'issue' between the parties such as the value of an asset on which they had not taken defined positions, in which case the procedure was held to be expert determination; or a 'formulated dispute' between the parties where defined positions had been taken, in which case the procedure was held to be an arbitration. This imprecise concept is still being relied on. It is unsatisfactory because some parties to contract deliberately choose expert determination for dispute resolution. The next guideline is the judicial function of an arbitral tribunal as opposed to the expertise of the expert; …. An arbitral tribunal arrives at its decision on the evidence and submissions of the parties and must apply the law or if the parties agree, on other consideration; an expert, unless it is agreed otherwise, makes his own enquiries, applies his own expertise and decides on his own expert opinion…."

20. The authorities thus seem to agree that while there are no conclusive tests, by and large, one can follow a set of guidelines in deciding whether the agreement is to refer an issue to an expert or whether the parties have agreed to resolve disputes through arbitration.

> *21. Therefore our courts have laid emphasis on (1) existence of disputes as against intention to avoid future disputes; (2) the tribunal or forum so chosen is intended to act judicially after taking into account relevant evidence before it and the submissions made by the parties before it; and (3) the decision is intended to bind the parties. Nomenclature used by the parties may not be conclusive. One must examine the true intent and purport of the agreement. There are, of course, the statutory requirements of a written agreement, existing or future disputes and an intention to refer them to arbitration. (Vide Section 2 Arbitration Act, 1940 and Section 7 Arbitration and Conciliation Act, 1996.)"*

16. In ***Jagdish Chander (supra),*** the Supreme Court once again considered the attributes of an arbitration agreement and *inter alia* held that intention of the parties to enter into an arbitration agreement has to be gathered from the terms of the agreement and if the terms clearly indicate such an intention as also a willingness to be bound by the decision of such a Tribunal, such an agreement is an arbitration agreement. It was also held that even if the words *"arbitration"* and *"arbitral tribunal"* are not used with reference to settlement process, it does not detract from the clause being an arbitration agreement, if it otherwise has the attributes as required under Section 7 of 1996 Act *albeit* the converse is also true that mere use of the words *"arbitration"* and *"arbitrator"* in a clause will not make it an arbitration agreement, if it requires or contemplates a further consent of the parties for reference to arbitration. Relevant passages from the judgment are as follows:-

> *"8. This Court had occasion to refer to the attributes or essential elements of an arbitration agreement in K.K. Modi v. K.N. Modi [(1998) 3 SCC 573], Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd. [(1999) 2 SCC 166] and Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd. [(2003) 7 SCC 418] In State of Orissa v. Damodar Das [(1996) 2 SCC 216] this Court held that a clause in a contract can be construed as an "arbitration agreement" only if an agreement to refer disputes or differences to arbitration is expressly or impliedly spelt out from the clause. We may at this juncture set out the well-settled principles in regard to what constitutes an arbitration agreement:*

(i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and a willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.

(ii) Even if the words "arbitration" and "Arbitral Tribunal (or arbitrator)" are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. They are : (a) The agreement should be in writing. (b) The parties should have agreed to refer any disputes (present or future) between them to the decision of a private tribunal. (c) The private tribunal should be empowered to adjudicate upon the disputes in an impartial manner, giving due opportunity to the parties to put forth their case before it. (d) The parties should have agreed that the decision of the private tribunal in respect of the disputes will be binding on them.

(iii) Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to arbitration, it is an arbitration agreement. Where there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement to make it an arbitration agreement. But where the clause relating to settlement of disputes, contains words which specifically exclude any of the attributes of an arbitration agreement or contains anything that detracts from an arbitration agreement, it will not be an arbitration agreement. For example, where an agreement requires or permits an authority to decide a claim or dispute without hearing, or requires the authority to act in the interests of only one of the parties, or provides that the decision of the authority will not be final and binding on the parties, or that if either party is not satisfied with the decision of the authority, he may file a civil suit seeking relief, it cannot be termed as an arbitration agreement.

(iv) But mere use of the word "arbitration" or "arbitrator" in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as "parties can, if they so

> *desire, refer their disputes to arbitration" or "in the event of any dispute, the parties may also agree to refer the same to arbitration" or "if any disputes arise between the parties, they should consider settlement by arbitration" in a clause relating to settlement of disputes, indicate that the clause is not intended to be an arbitration agreement. Similarly, a clause which states that "if the parties so decide, the disputes shall be referred to arbitration" or "any disputes between parties, if they so agree, shall be referred to arbitration" is not an arbitration agreement. Such clauses merely indicate a desire or hope to have the disputes settled by arbitration, or a tentative arrangement to explore arbitration as a mode of settlement if and when a dispute arises. Such clauses require the parties to arrive at a further agreement to go to arbitration, as and when the disputes arise. Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future."*

17. It is also trite that for making reference to arbitration under Section 11 of 1996 Act it is essential that Court must determine whether there exists a valid arbitration agreement between the parties raising the disputes. ***[Ref.: Wellington Associates Ltd. v. Kirit Mehta, (2000) 4 SCC 272*** and ***Krish Spinning (supra)].*** The conundrum of determining the existence of an arbitration agreement in Court's quest to do so is best resolved by first reading the clause itself, since the language will be a pointer to the intention of the parties to choose arbitration as a dispute resolution mechanism and then examining if the clause satisfies the ingredients of Section 7 of 1996 Act. In this backdrop, I may now examine Clauses 21 and 19 of the Lease and Licence Deeds respectively, to determine if they can be construed as valid arbitration agreements.

18. Perusal of the clauses indicates that parties were *ad idem* with respect to the mode and method by which the dispute resolution had to take place. The words *"in the event of any question, dispute or difference arising under these presents or in connection therewith…between the lesser and the lessee,*

the decision of VC, DDA shall be final and binding…" in Clause 21 and the words *"in case of any dispute arising between the licensor and the licensee in respect of the interpretation or performance of any terms or conditions of this licence, the decision of Vice-Chairman of the DDA thereon shall be final and binding on both the parties…"* in Clause of 19 of the License Deed, clearly reflect that both parties agreed that the *inter se* disputes arising from the Lease and Licence Deeds will be 'adjudicated' by VC, DDA and the 'decision' shall bind them and the agreements are in 'writing' and hence, in my view, all attributes of an arbitration agreement viz: (a) agreements are in writing; (b) the authority named therein is required to adjudicate the disputes and render a decision; and (c) the decision shall bind both the parties, are met, leading to a conclusion that parties envisaged reference of disputes for adjudication through arbitration as dispute resolution mechanism. As rightly flagged by learned Senior Counsels for the Petitioner, a similar clause came up for consideration before the Supreme Court in ***Dina Nath (supra)*** and was construed to be an arbitration agreement and I quote hereunder the relevant passages from the said judgment:-

> *"**5.** Having heard the learned counsel for the parties and after going through the impugned order of the High Court as well as the orders of the appellate court and the trial court and the materials on record and considering the clauses in the Work Order, we are of the view that the High Court was fully justified in setting aside the order of the appellate court and restoring the order of the Additional Subordinate Judge by which the dispute was referred to arbitration for decision. Before proceeding further, we may, however, take note of some of the relevant clauses in the Work Order which read as under:*
>
> > *"13. If the contractor does not carry out the work as per the registered specifications, the department will have the option to employ its own labour or any other agency to bring the work to the departmental specification and recover the cost therefrom."*
> >
> > * * *

"4. Any dispute arising between the department and the contractor/society shall be referred to the Superintending Engineer, Anandpur Sahib, Hydel (Construction) Circle No. 1, Chandigarh for orders and his decision will be final and acceptable/binding on both parties."

6. *As pointed out herein earlier, the trial court on consideration of clause 4 of the Work Order held that clause 4 of the Work Order must be held to be an arbitration agreement and accordingly an arbitrator was appointed in compliance with clause 4 of the Work Order. At this stage, we feel it appropriate to examine in detail whether clause 4 of the Work Order can be held to be an arbitration agreement within the meaning of Section 2(a) of the Act.*

7. *Section 2(a) of the Act defines "arbitration agreement" which means a written agreement to submit present or future differences to arbitration whether arbitrator is named therein or not. Mr Rathore, learned Additional Advocate General appearing on behalf of the appellants contended that although the Work Order was allotted to the respondent on 16-5-1985, the respondent had failed to execute the work allotted to him and the appellant had got the work executed at its own cost in terms of clause 13 of the Work Order which, as noted herein earlier, provides that in case the contractor does not execute the allotted work, the department could get the same executed by other agencies or by itself. He further contended that owing to such failure on the part of the respondent, final bills were not prepared nor were the final measurements taken for the purpose of payment to the respondent. Accordingly, Mr Tathore contended that there was no existence of any dispute and accordingly, the question of referring such disputes in terms of clause 4 of the Work Order could not arise at all. This submission of Mr Tathore was contested by the learned counsel for the respondent. Therefore, a dispute arose as to whether the respondent had completed the work allotted to him under the Work Order. This is an issue, according to the High Court as well as the Subordinate Court, which should be referred for decision to an arbitrator.*

8. *A bare perusal of the definition of arbitration agreement would clearly show that an 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 any dispute arises between them in respect of the subject-matter of the contract, such dispute shall be referred to arbitration. In that case, such agreement would certainly spell out an arbitration agreement. (See Rukmanibai Gupta v. Collector [(1980) 4 SCC 556 : AIR 1981 SC 479] .) However, from the definition of the arbitration agreement, it is also clear that the agreement must be in writing and to interpret the agreement as an "arbitration agreement" one has to ascertain the intention of the parties and also treatment of the decision as final. If the parties had desired and intended that a dispute must be referred to arbitration for decision and they would undertake to abide by that decision, there cannot*

be any difficulty to hold that the intention of the parties was to have an arbitration agreement, that is to say, an arbitration agreement immediately comes into existence.

9. *In Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd. [(2003) 7 SCC 418] this Court held that: (SCC p. 423, para 14)*

> *"14. There is no dispute with regard to the proposition that for the purpose of construing an arbitration agreement, the term 'arbitration' is not required to be specifically mentioned therein."*

Looking to the opinion of the Hon'ble Judges in the said case and also considering clause 4 of the Work Order in depth, we are of the opinion that clause 4 of the Work Order between the parties can be interpreted to be an arbitration agreement even though the term "arbitration" is not expressly mentioned in the agreement. In this decision of this Court the test of "dispute" and "reference" was again reiterated. In para 17, it was stated that there cannot be any doubt whatsoever that an arbitration agreement must contain broad consensus between the parties that the disputes and differences should be referred to a domestic tribunal.

10. *We have already noted clause 4 of the Work Order as discussed hereinabove. It is true that in the aforesaid clause 4 of the Work Order, the words "arbitration" and "arbitrator" are not indicated; but in our view, omission to mention the words "arbitration" and "arbitrator" as noted herein earlier cannot be a ground to hold that the said clause was not an arbitration agreement within the meaning of Section 2(a) of the Act. The essential requirements as pointed out herein earlier are that the parties have intended to make a reference to an arbitration and treat the decision of the arbitrator as final. As the conditions to constitute an "arbitration agreement" have been satisfied, we hold that clause 4 of the Work Order must be construed to be an arbitration agreement and dispute raised by the parties must be referred to the arbitrator. In K.K. Modi v. K.N. Modi [(1998) 3 SCC 573] this Court had laid down the test as to when a clause can be construed to be an arbitration agreement when it appears from the same that there was an agreement between the parties that any dispute shall be referred to the arbitrator. This would be clear when we read para 17 of the said judgment and Points 5 and 6 of the same which read as under: (SCC p. 584)*

> *"(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."*

xxx *xxx* *xxx*

14. *The words "any dispute" appears in clause 4 of the Work Order. Therefore, only on the basis of the materials produced by the parties in support of their respective claims a decision can be arrived at in resolving the dispute between the parties. The use of the words "any dispute" in clause 4 of the Work Order is wide enough to include all disputes relating to the said Work Order. Therefore, when a party raises a dispute for non-payment of money after completion of the work, which is denied by the other party, such a dispute would come within the meaning of "arbitration agreement" between the parties. Clause 4 of the Work Order also clearly provides that any dispute between the department and the contractor shall be referred to the Superintending Engineer, Hydel Circle No. 1, Chandigarh for orders. The word "orders" would indicate some expression of opinion, which is to be carried out, or enforced and which is a conclusion of a body (in this case Superintending Engineer, Hydel Circle No. 1, Chandigarh). Then again the conclusion and decision of the Superintending Engineer will be final and binding on both the parties. This being the position in the present case and in view of the fact that clause 4 of the Work Order is not under challenge before us, the decision that would be arrived at by Superintending Engineer, Hydel Circle No. 1, Chandigarh must also be binding on the parties as a result whereof clause 4 must be held to be a binding arbitration agreement.*

xxx *xxx* *xxx*

19. *At the risk of repetition we may also say before parting with this judgment that clause 4 of the Work Order speaks for a dispute between the parties. It also speaks of a dispute and all such disputes between the parties to the Work Order shall be decided by the Superintending Engineer, Anandpur Sahib, Hydel Circle No. 1. Obviously, such decision can be reached by the Superintending Engineer, Anandpur Sahib, Hydel Circle No. 1 only when it is referred to him by either party for decision. The reference is also implied. As the Superintending Engineer will decide the matter on reference, there cannot be any doubt that he has to act judicially and decide the dispute after hearing both the parties and permitting them to state their claim by adducing materials in support. In clause 4 of the Work Order it is also provided as noted herein earlier that the decision of the Superintending Engineer shall be final and such agreement was binding between the parties and decision shall also bind both the parties. Therefore, the result would be that the decision of the Superintending Engineer would be finally binding on the parties. Accordingly, in our view, as discussed hereinabove that although the expression "award" or "arbitration" does not appear in clause 4 of the Work Order even then such expression as it stands in clause 4 of the Work Order embodies an arbitration clause which can be enforced."*

19. In the aforesaid case, the clause which came up for interpretation before the Supreme Court was Clause 4 of the Work Order which provided that any dispute arising between the department and the contractor will be referred to SE for orders and the decision will be final and binding on both the parties. The Supreme Court interpreted the clause and construed the same to be an arbitration agreement. The clause is similar to the two clauses in the present case. In ***Smt. Rukmanibai Gupta (supra),*** Clause 15 in question provided that whenever any doubt, difference or dispute arose touching upon the construction of the Lease Deed in question or in respect of any matter connected with the lands or working or non-working thereof etc., the disputes shall be decided by the lessor, whose decision shall be final. The question before the Supreme Court was whether Clause 15 spelt out an arbitration agreement and analyzing the clause, the Supreme Court concluded that the clause was indeed an arbitration agreement and relevant passages are as follows:-

> *"**5.** The first question is whether clause 15 which we have extracted above spells out an arbitration agreement between the parties. A quarry lease is granted under the relevant Minor Mineral Rules by the State Government. The State is thus the lessor and the one who takes the quarry lease is the lessee. As required by Article 299 of the Constitution, all contracts made in exercise of the executive power of the State shall be expressed to be made by the Governor of the State and shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise. Lease has been accordingly executed. It is thus a contract. This contract incorporates clause 15 which we have extracted hereinabove.*
>
> ***6.** Does clause 15 spell out an arbitration agreement? Section 2(a) of the Arbitration Act, 1940, defines "arbitration agreement" to mean a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. Clause 15 provides that any doubt, difference or dispute, arising after the execution of the lease deed touching the construction of the terms of the lease deed or anything therein contained or any matter or things connected with the said lands or the working or non-working thereof or the amount or payment of any rent or royalty reserved or made payable thereunder, the matter in difference shall be decided by the lessor whose decision shall be final. The reference*

has to be made to the lessor and the lessor is the Governor. His decision is declared final by the terms of the contract. His decision has to be in respect of a dispute or difference that may arise either touching the construction of the terms of the lease deed or disputes or differences arising out of the working or non-working of the lease or any dispute about the payment of rent or royalty payable under the lease deed. Therefore, clause 15 read as a whole provides for referring future disputes to the arbitration of the Governor. 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."*

In the clause under discussion there is a provision for referring the disputes to the lessor and the decision of the lessor is made final. On its true construction it spells out an arbitration agreement.

***7.** A feeble attempt was made to contend that clause 15 provides a departmental appeal but does not provide for resolution of dispute by arbitration. There was no question of providing for an appellate forum by the terms of the lease. On the contrary, the language of clause 15 leaves no room for doubt that it spells out an arbitration agreement. In this connection reference may be made to Chief Conservator of Forests v. Rattan Singh [AIR 1967 SC 166 : 1966 Supp SCR 158] where an identical clause in a forest contract entered into between the forest contractor and the Governor of Madhya Pradesh came in for consideration. Relevant clause was as under:*

> *"9. In the event of any doubt or dispute arising between the parties as to the interpretation of any of the conditions of this contract or as to the performance or breach thereof, the matter shall be referred to the Chief Conservator of Forests, Madhya Pradesh, Nagpur, whose decision shall be final and binding on the parties hereto."*

This Court, interpreting this clause, held that it spells out an arbitration agreement and it confers authority on the Chief Conservator of Forests to adjudicate upon disputes, inter alia, as to the performance or breach of the contract. Apart from this, appellant herself has unreservedly accepted clause 15 spelling out an arbitration agreement. In para 10 of her submission to Respondent 4 it was stated as under:

> *"10. That as laid down in clause 15 of lease deed read with Rule 50(16) of the Mining Manual substantial dispute and difference arise touching the construction of these presents of lease deed on the question of payment of royalty. The matter in dispute is, therefore, being referred to State Government for decision."*
>
> *We, therefore, need not dilate on this aspect any more and hold in agreement with the High Court that clause 15 spells out an arbitration agreement."*

20. In ***Jagdish Chander (supra),*** the Supreme Court held that the intention of the parties has to be gathered from the terms of the agreement and merely because the words *"arbitration", "arbitral tribunal"* or *"arbitrator"* are not used in the agreement, it will not detract from the clause being an arbitration clause, if it otherwise meets the yardstick and fulfils the ingredients and attributes of Section 7 of 1996 Act. In light of the judgments aforementioned, it is held that Clauses 21 and 19 of the Lease and License Deeds are arbitration agreements and hence, the objection of DDA that no valid arbitration agreements exist between the parties, deserves to be rejected.

21. Reliance of DDA on the judgment of the Supreme Court in ***South Delhi Municipal Corporation (supra),*** is misplaced. The Supreme Court in the said case was dealing with Article 20 of the Concession Agreements, which provided *"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 event of Default any party shall refer the dispute, controversy or claim to the Commissioner, MCD".* Interpreting the clause, the Supreme Court concluded that the same does not reveal any express intent to arbitrate and detailed the reasons for the conclusion as follows:-

> *"**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, 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."*

22. As can be seen from the judgment, one of the factors that weighed with the Supreme Court in construing Article 20 as not being an arbitration agreement was that the subject clause was titled as *"mediation by Commissioner",* which according to the Supreme Court raised a conundrum as to the mode of dispute resolution and it was observed that it was

inconceivable as to why two parties who were *ad idem* in wanting to settle their disputes through arbitration, would label the dispute resolution clause in such a befuddling manner and held that the title of the clause unequivocally indicated a non-adjudicatory and conciliatory process rather than an arbitration mechanism. Therefore, this judgment is clearly distinguishable and does not help DDA. On the other hand, a similar clause has been interpreted by the Supreme Court in ***Dina Nath (supra)*** to be an arbitration clause on the touchstone that it satisfies all ingredients of Section 7 of 1996 Act and the judgement holds the field.

23. There can be no dispute that principle of party autonomy is the hallmark of any arbitral process and after the judgements of the Supreme Court in ***Perkins (supra), Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Company, 2024 SCC OnLine SC 3219*** and ***South Delhi Municipal Corporation (supra),*** unilateral appointment of an Arbitrator cannot be sustained. After these judgements, in many cases Courts have appointed arbitrators where there existed arbitration clauses but appointments were envisaged by one party to the agreements.

24. The second objection that the disputes sought to be raised by the Petitioner are non-arbitrable, cannot be entertained in the present petition. It is now well settled that determination of the question of arbitrability of the disputes is to be left to the Arbitral Tribunal and is beyond the remit or domain of the referral Court under the Section 11 of 1996 Act. The scope of enquiry, at the stage of appointment of Arbitrator is limited to determining the existence of a valid arbitration agreement and whether the petition is barred by limitation. ***[Ref.: Krish Spinning (supra)].***

25. For all the aforesaid reasons, these petitions are allowed, appointing Dr. Amit George, Advocate (Mobile No.9910524364) as Sole Arbitrator to adjudicate the disputes between the parties. These will be treated as separate references. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre ('DIAC'). Fee of the Arbitrator shall be fixed as per fee schedule under DIAC (Administrative Cost & Arbitrators' Fees) Rules, 2018.

26. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

27. It is made clear that this Court has not expressed any opinion on the merits of the cases and all rights and contentions of the parties are left open.

28. Petitions are disposed of in the aforesaid terms.

JYOTI SINGH, J

NOVEMBER 26, 2025*/S.Sharma/YA*