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

% *Judgment reserved on: 30.10.2026*
Judgment pronounced on: 19.11.2026
Judgment uploaded on: 19.11.2026

CNR No. DLHC010485542026

\+ **ARB.P. 1811/2026**

JANVEE CONTRACTS PVT LTD (JCPL) .....Petitioner

Through: Mr. Gaurav Kumar Singh, Advocate

versus

AHLUWALIA CONTRACTS (INDIA) LTD. (ACIL) .....Respondent

Through: Mr. Sunil Mund, Mr. Mritunjay Singh, Mr. Jagjeet Singh and Mr. Vedant Mund, Advocates

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. The petitioner has approached this Court by instituting this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 [hereafter '**A&C Act**'], for seeking appointment of an independent sole arbitrator for adjudicating its dispute with the respondent.

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FACTUAL BACKGROUND

2. Briefly stated, the facts of the case, as discernible from the petition, are that the respondent, Ahluwalia Contracts (India) Ltd., had issued a Work Order bearing No. ACIL/RKMCH/WO/2021/20 dated 01.05.2021 [hereafter '**Work Order**'] in favour of the petitioner, Janvee Contracts Pvt. Ltd., in respect of the project — Dr. Radha Krishnan Medical College & Hospital, Hamirpur. The nature of work was 'Concrete Mixing, Transportation & Pumping', i.e. batching, mixing, transportation and pumping of concrete of desired grade as per the instructions of the Engineer-in-Charge at site, by providing plants and equipment as detailed in Annexure-I to the Work Order. The estimated quantity of work was 48,000 cubic metres at the rate of Rs. 415/- per cubic metre, and the value of the work was Rs. 1,99,20,000/-.

3. The Work Order was accompanied by five annexures setting out the special terms and conditions, the scope of work of the respective parties, and the financial conditions. Annexure-III thereto, under the heading "ARBITRATION AND RESOLUTION OF DISPUTE", contains Clauses 18 and 19, which form the bone of contention between the parties. These clauses are set out below:

> "**ARBITRATION AND RESOLUTION OF DISPUTE:**
>
> **18.** In case of any difference or dispute between the parties which may arise on context of this contrat and its performance, the same will be resolved amicably in consultation with Chairman-ACIL and his decision shall be final and binding on both the parties.

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> **19.** The court of Delhi alone shall have exclusive jurisdiction in all matters arising out of this contract."

4. As per the petitioner, an amount of Rs. 9,25,186/- was found due and payable to it as per its ledger account, besides an amount of Rs. 4,61,254/- withheld by the respondent as security deposit, totalling Rs. 13,86,440/-, which had become payable on 20.12.2022. The petitioner has computed interest thereon at the rate of 15% per annum for a period of 954 days till 31.07.2025, amounting to Rs. 5,43,560/-, and thus claims a total sum of Rs. 19,30,000/- from the respondent.

5. It is stated that on 20.03.2024, the petitioner had addressed a letter through email to the Chairman-cum-Managing Director of the respondent, requesting release of its pending dues in respect of all the projects/sites executed by it. In response thereto, by way of email dated 21.03.2024, the Chairman of the respondent stated that all the payments due for the various sites had been paid and nothing was due as per the records of the respondent. Thereafter, *vide* communication dated 15.04.2025 bearing Ref. No. JCPL/LTR/2024-25/01, the petitioner again raised its claims in respect of the present work as well as other projects executed by it for the respondent.

6. Subsequently, the petitioner issued a notice dated 28.07.2025 under Section 21 of the A&C Act, invoking Clause 18 of the Work Order and calling upon the respondent to clear the outstanding amount of Rs. 19,30,000/- within fifteen days, failing which it would

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approach the Court under Section 11 of the A&C Act. The respondent, through its counsel, replied to the said notice *vide* reply dated 23.08.2025, denying the claims of the petitioner in their entirety, and specifically disputing the existence of any arbitration agreement between the parties. It was stated therein that Clause 18 "merely provides for an internal dispute resolution mechanism and cannot be equated to an agreement to arbitrate".

7. It is further stated in the petition that the parties had exchanged details of the work orders and the amounts claimed under various projects, including the present one, during the pre-institution mediation (Reference No. 1577/Pre-inst./DHCLSC/2025) held in respect of another project of the parties, i.e. Prateek Grand City at Siddhartha Vihar, Ghaziabad, which did not yield any result; and that the respondent, *vide* letter dated 01.04.2026, had sought confirmation of the outstanding balance as on 31.03.2026 for audit purposes.

8. In this background, the petitioner has approached this Court.

SUBMISSIONS BEFORE THE COURT

9. The learned counsel appearing for the petitioner drew the attention of this Court to Clause 18 of the Work Order, and argued that the petitioner and the respondent are two companies which had undertaken to work under the Work Order, which itself contains a clause titled "Arbitration and Resolution of Dispute". It was argued that as per Clause 18, any difference or dispute between the parties arising in the context of the contract and its performance was to go to

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the Chairman of the respondent, whose decision was to be final and binding on both the parties, and that the clause, therefore, reflects the intention of the parties to have their disputes resolved through a binding decision. It was contended that a dispute between two independent contracting companies cannot be brushed aside as being subject merely to an 'internal dispute resolution mechanism', as submitted by the respondent. It is further argued that since the Chairman of the respondent, being the head of the opposite party, cannot himself act as the arbitrator, this Court may appoint an independent sole arbitrator in his place. The learned counsel also argued that the respondent, with *mala fide* intent, had failed to release even the security deposit of Rs. 4,61,254/-, and therefore, an independent sole arbitrator be appointed under the aegis of Delhi International Arbitration Centre (DIAC) for adjudication of the disputes between the parties.

10. *Conversely*, the learned counsel appearing for the respondent also drew the attention of this Court to Clause 18 of the Work Order, and argued that there is no provision for arbitration in the Work Order. It was argued that Clause 18 merely contemplates that the differences between the parties would be resolved amicably in consultation with the Chairman of the respondent, and that arbitration was never intended by the parties. The learned counsel further placed reliance on Clause 19 of the Work Order, which provides that the courts of Delhi alone shall have exclusive jurisdiction in all matters arising out of the contract, to contend that the parties had consciously

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agreed that their disputes would be adjudicated by the courts. It was also pointed out that the respondent, in its reply dated 23.08.2025 to the notice invoking arbitration, had categorically denied the existence of any arbitration agreement between the parties, besides denying the claims of the petitioner. It was, therefore, prayed that the present petition be dismissed.

11. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

ANALYSIS *&* FINDINGS

12. The principal issue which arises for consideration before this Court is whether Clause 18 of the Work Order dated 01.05.2021 constitutes an arbitration agreement within the meaning of Section 7 of the A&C Act, so as to enable this Court to appoint an arbitrator under Section 11(6) of the A&C Act.

Scope of examination under Section 11 of the A&C Act

13. At the outset, this Court notes that the scope of examination by a referral court under Section 11 of the A&C Act is a limited one. In ***SBI General Insurance Co. Ltd. v. Krish Spinning:*** *(2024) 12 SCC 1*, the Hon'ble Supreme Court, after taking note of the decision of the seven-Judge Bench in ***In Re: Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899****, In re: (2024) 6 SCC 1*, held as under:

> "116. Referring to the Statement of Objects and Reasons of the

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Arbitration and Conciliation (Amendment) Act, 2015, it was observed in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re* that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow: (SCC p. 104, para 220)

> "220. The above extract indicates that *the Supreme Court or High Court at the stage of the appointment of an arbitrator shall "examine the existence of a prima facie arbitration agreement and not other issues". These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.* Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the Referral Court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an un-stamped instrument under the Stamp Act is not a time-bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators."
>
> (emphasis supplied)
>
> 117. In view of the observations made by this Court in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1, it is clear that **the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else**…"
>
> (Emphasis added)

14. It is, therefore, evident that while the referral court is not to embark upon an examination of the merits of the disputes or other contentious issues, the existence of an arbitration agreement is the very foundation of the jurisdiction exercised under Section 11 of the

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A&C Act. The power to appoint an arbitrator is conferred upon the Court so as to give effect to an agreement of the parties to arbitrate, and it does not extend to creating such an agreement where none exists. In the present case, the objection raised by the respondent relates to the very existence of an arbitration agreement.

15. The execution of the Work Order and the text of Clauses 18 and 19 are not in dispute, and the question involved in the present petition is purely one of construction of the said clauses, which falls squarely within the limited examination permissible to this Court at this stage.

What constitutes an arbitration agreement?

16. Section 7 of the A&C Act defines an arbitration agreement and, insofar as relevant, it reads as under:

> "**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…"
>
> (Emphasis added)

17. The attributes which

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must be present for an agreement to be considered as an arbitration agreement were discussed by the Hon'ble Supreme Court in ***K.K. Modi v. K.N. Modi:*** *(1998) 3 SCC 573*, in the followin

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words:

> "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.
>
> 18. The other factors which are relevant include, whether the agreement contemplates that the tribunal will receive evidence from both sides and hear their contentions or at least give the parties an opportunity to put them forward; whether the wording of the agreement is consistent or inconsistent with the view that the process was intended to be an arbitration, and whether the agreement requires the tribunal to decide the dispute according to law."

18. The principles with respect to what constitutes an arbitration agreement were also summarised by the Hon'ble Supreme Court in ***Jagdish Chander v. Ramesh Chander:*** *(2007) 5 SCC 719*, as under:

> "8. This Court had occasion to refer to the attributes or

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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

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> 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. …"
>
> (Emphasis added)

19. In ***Mahanadi Coalfields Ltd. v. IVRCL AMR Joint Venture:*** *(2022) 20 SCC 636*, the Hon'ble Supreme Court, applying the above principles, held that a clause titled "Settlement of Disputes/Arbitration", which provided for an effort to settle the disputes at the company level and thereafter for redressal of disputes in a court of law, did not constitute an arbitration agreement. The relevant observations are as under:

> "10. In the present case, clause 15 of the Contract Agreement is titled "Settlement of Disputes/Arbitration". However, **the substantive part of the provision makes it abundantly clear that there is no arbitration agreement between the parties agreeing to refer either present or future disputes to**

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arbitration.

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13. The above extract makes it abundantly clear that **clause 15 of the Contract Agreement is a dispute resolution mechanism at the company level, rather than an arbitration agreement.** Consequently, in case of a dispute, the respondent was supposed to write to the Engineer-in-charge for resolving the dispute. Clause 15 does not comport with the essential attributes of an arbitration agreement in terms of section 7 of the 1996 Act as well as the principles laid down under Jagdish Chander (supra). A plain reading of the above clause leaves no manner of doubt about its import. There is no written agreement to refer either present or future disputes to arbitration. Neither does the substantive part of the clause refer to arbitration as the mode of settlement, nor does it provide for a reference of disputes between the parties to arbitration. **It does not disclose any intention of either party to make the Engineer-in-Charge, or any other person for that matter, an arbitrator in respect of disputes that may arise between the parties**…"

(Emphasis added)

20. In ***Consolidated Construction Consortium Limited v. South Delhi Municipal Corporation:*** *2022 SCC OnLine Del 3607*, the Coordinate Bench of this Court was concerned with dispute resolution clauses which required disputes to be referred to the Commissioner, MCD. The clause in question, i.e. Article 20 was titled as 'Disputes' and within the said clause, Section 20.1 was titled as 'Mediation by Commissioner'. It was held that though the word used in the clause was 'mediation' and not 'arbitration', the contents of the clause clearly envisaged an arbitration agreement, inasmuch as it was an agreement in writing, either party could refer dispute to the Commissioner, either party could lead evidence, and the decision was to be final and binding upon them. While reversing the said decision,

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the Hon'ble Supreme Court in ***South Delhi Municipal Corporation of Delhi v. SMS Limited:*** *(2026) 1 SCC 545* set out the necessary ingredients of an arbitration agreement, which includes clear intent to arbitrate, binding adjudicatory process and compliance with arbitration norms. The Supreme Court held that in this case, there was no intent to arbitrate since the word 'arbitration' was used nowhere in the clause, and even a reading of the contents did not lead to a conclusion that it was in the nature of an arbitration agreement and rather, it appeared to be an internal dispute resolution mechanism. It was further held that even the words 'shall be final and binding upon the parties' could not transform the said clause into an arbitration agreement since other forms of decision-making, such as expert determinations, departmental adjudications and administrative reviews, even when final and binding, do not *ipso facto* constitute arbitration. It was also observed that a reference of disputes to an officer of one of the parties, rather than to an arbitral tribunal or an independent third-party adjudicator, is suggestive of an internal dispute resolution mechanism rather than an external arbitration forum. The relevant observations of the Hon'ble Supreme Court are extracted hereunder:

> "**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

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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.

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

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

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

49. The second limb of this issue, concerns the consideration of the facts and circumstances of these appeals amidst the legal

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backdrop we have previously set out. We may, at this stage, revert back to paras 23 to 26 where the dispute resolution clauses contained in all the three Concession Agreements are extracted and reproduced.

50. 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.

51. 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.

52. 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*

53. 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.

54. 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:

54.1. 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. 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

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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.

54.2. 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.

54.3. 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.

54.4. 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.

54.5. 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*

55. 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.

56. 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.

57. 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

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binding, do not ipso facto constitute arbitration. The arduous task of ascertaining and identifying the category to which these cases fall is beyond the scope of these appeals.

D.2.3. *Compliance with Arbitral Norms*

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

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

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D.2.3.3. *Neutrality and Independence of the Arbitrator*

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

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

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> appointee in these cases further entrenches the one-sided nature of the appointment process, allowing MCD to unilaterally select a decision-maker from within its own ranks, thereby compromising the neutrality essential to any adjudicatory mechanism.
>
> **65**. In conclusion, a holistic analysis of Article 20 across the subject Concession Agreements leads us to the inescapable conclusion that **it does not satisfy the requirements of an arbitration agreement under Section 7 of the Arbitration Act. While certain textual elements—such as the use of the phrase 'final and binding' in the cases of DSC Ltd. and CCC Ltd.—may superficially resemble arbitration, a deeper examination reveals that the clause is procedurally and structurally deficient in ways that render it incapable of operating as an arbitration clause in law**."
>
> (Emphasis added)

21. This Court is also conscious that there is another line of decisions of the Hon'ble Supreme Court, such as ***Rukmanibai Gupta v. Collector, Jabalpur:*** *(1980) 4 SCC 556* and ***Punjab State v. Dina Nath:*** *(2007) 5 SCC 28*, wherein clauses providing that disputes "shall be referred" to a named officer or authority "for orders", or "shall be decided" by such authority, whose decision would be final, were construed as arbitration agreements, even though the words 'arbitration' or 'arbitrator' were not used therein. Relying upon the said decisions, a Coordinate Bench of this Court in ***Jhankar Banquets v. Delhi Development Authority:*** *2025 SCC OnLine Del*, has held clauses providing that, in case of any dispute between the parties, the decision of the Vice-Chairman, DDA thereon shall be final and binding, to be arbitration agreements; and has distinguished ***SMS Limited*** (*supra*) on the ground that the clause considered

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therein was titled ‘Mediation by Commissioner’, which indicated a non-adjudicatory and conciliatory process rather than an arbitration mechanism.

22. A conspectus of the aforesaid decisions makes it clear that no particular form or words are required to constitute an arbitration agreement, and the absence of the words ‘arbitration’ or ‘arbitrator’ is not fatal, if the clause otherwise discloses a clear intention of the parties to refer their disputes to a private forum for adjudication and to be bound by its decision. *Conversely*, the mere use of the word ‘arbitration’ does not make a clause an arbitration agreement, if its substance does not reflect such an intention. The decisive test, therefore, is whether the words used by the parties, read as a whole and in the context of the contract, disclose a determination and obligation to submit their disputes to an adjudicatory process – in which the dispute is decided by a forum acting judicially, after affording both sides an opportunity to put forth their case – as distinguished from a mechanism which is aimed only at an amicable or consensual settlement of differences. It is in this light that Clause 18 of the Work Order in the present case has to be examined.

Whether Clause 18 of the Work Order constitutes an arbitration agreement?

23. A careful reading of Clause 18 of the Work Order reveals that its operative part provides that in case of any difference or dispute between the parties arising in the context of the contract and its

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performance, "*the same will be resolved amicably in consultation with Chairman-ACIL*". Thus, the clause first contemplates the existence of a difference or dispute between the parties and then provides for its resolution amicably, in consultation with the Chairman of the respondent. Significantly, the clause does not provide that such dispute shall be "referred" to the Chairman for his adjudication, decision or orders. It also does not describe the Chairman as an arbitrator or constitute him as an arbitral tribunal. There is no provision for submission of the respective claims or defence of the parties, or for any adjudication of the dispute. The clause, therefore, in its operative terms, contemplates an amicable resolution of the differences between the parties, in consultation with the Chairman of the respondent.

24. The expression "resolved amicably" denotes a resolution arrived at in a friendly manner, by mutual accord between the parties. Similarly, the expression "in consultation with" connotes a process of deliberation and exchange of views, and not a process of adjudication. An amicable resolution, by its very nature, is consensual. Arbitration, on the other hand, is an adjudicatory process, wherein the arbitral tribunal determines a formulated dispute after considering the respective cases of the parties, and its decision binds the parties irrespective of whether they agree with the outcome. The two processes are, thus, conceptually distinct. Parties may, of course, agree that they would first attempt to resolve their differences amicably and, if such attempt fails, the dispute shall thereafter be

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referred to arbitration. In such a case, the amicable resolution is only a pre-condition or first step before arbitration. However, in the present case, Clause 18 does not provide for any such subsequent reference to arbitration. The clause provides only for amicable resolution in consultation with the Chairman-ACIL and ends there. The A&C Act itself treats conciliation under Part III as a process separate and distinct from arbitration under Part I. Clause 18, therefore, in its substance, contemplates an amicable and consultative settlement of differences, and not adjudication through arbitration.

25. This Court is conscious that, unlike the clause considered by the Hon'ble Supreme Court in ***Mahanadi Coalfields*** (*supra*), Clause 18 of the Work Order in the present case also states that the decision of the Chairman "shall be final and binding on both the parties", and it is this phrase which forms the foundation of the petitioner's case. However, these words cannot be read in isolation and must be read along with the words which precede them. In this context, the decision in ***SMS Limited*** (*supra*) is noteworthy, wherein the Hon'ble Supreme Court has specifically held that finality alone does not equate a dispute resolution clause with arbitration, and that other forms of decision-making, even when final and binding, do not *ipso facto* constitute arbitration.

26. Read as a whole, the "decision" contemplated under Clause 18 is one which emerges out of an amicable resolution in consultation with the Chairman of the respondent, and not a determination of a

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formulated dispute upon adjudication of the rival claims. Finality attaches to the outcome of the process, but it does not by itself determine whether that process is arbitral, administrative or conciliatory. The decisive consideration remains whether the parties intended the designated authority to adjudicate upon their formulated disputes by exercising a judicial function, or whether the authority was contemplated as part of a mechanism for facilitating an amicable resolution of their differences. In the present case, the language of Clause 18 points towards the latter.

27. Further, Clause 18 does not provide for any of the usual incidents of an adjudicatory process. It does not contemplate an opportunity of hearing to the parties, the reception of evidence from both sides, or a decision in accordance with law. In ***SMS Limited*** (*supra*), the Hon'ble Supreme Court underlined that the tribunal must determine the rights of the parties "in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides", and that a relevant consideration is whether the agreement contemplates that the tribunal will receive evidence from both sides and hear their contentions. In ***Jagdish Chander*** (*supra*), it was held that where a clause permits an authority to decide a claim or dispute without hearing, or contains anything that detracts from an arbitration agreement, it will not be an arbitration agreement. In the present case, Clause 18 speaks only of consultation for an amicable resolution and contains no indication of any adjudicatory process. This also supports the conclusion that the clause was not intended to

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constitute an arbitration mechanism.

28. This Court further notes that the person with whom consultation was to take place under Clause 18 is the Chairman of the respondent company itself, i.e., the head of one of the two contracting parties, and not any independent third person. The mechanism under Clause 18 is thus in the nature of a company-level mechanism for settlement of differences, akin to the one considered by the Hon'ble Supreme Court in ***Mahanadi Coalfields*** (*supra*), rather than a reference of disputes to a private tribunal for adjudication. As observed in ***SMS Limited*** (*supra*), the reference of disputes to an officer of one of the parties, rather than to an arbitral tribunal or an independent third-party adjudicator, suggests that the parties contemplated an internal mechanism for resolution of differences and not the constitution of a private adjudicatory forum.

29. The reliance placed by the petitioner on the heading of the clause, i.e. "Arbitration and Resolution of Dispute", also does not advance its case. It is the substance of the clause, and not its heading, which determines whether it is an arbitration agreement.

30. In ***Mahanadi Coalfields*** (*supra*), the clause in question was titled "Settlement of Disputes/Arbitration", and yet the Hon'ble Supreme Court held that its substantive part made it abundantly clear that there was no agreement to refer disputes to arbitration.

31. In ***M/s Alchemist Hospitals Limited v. M/s ICT Health Technology Services India Private Limited:*** *2025 INSC 1289* also,

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the clause in question was titled as "Arbitration" and the contents of it also used the words "arbitrators" or "arbitration" at least three times. However, the Hon'ble Supreme Court, upon an overall reading of the clause, held that it amounted to an internal dispute resolution mechanism and not an arbitration agreement, and upheld the decision of the High Court of Punjab & Haryana dismissing the petition under Section 11(6) of the A&C Act.

32. In the present case as well, though the heading uses the word "arbitration", the operative part of Clause 18 neither refers to arbitration, nor provides for reference of disputes to any arbitrator or arbitral tribunal, nor lays down any procedure in that regard. Notably, the said heading governs both Clauses 18 and 19 of Annexure-III, and Clause 19, placed under the same heading, deals with the jurisdiction of courts. The heading, therefore, appears to be a general caption for the dispute resolution clauses, and cannot by itself supply an intention to arbitrate which the operative words of Clause 18 do not reflect.

33. As regards Clause 19 of the Work Order, which provides that "*the court of Delhi alone shall have exclusive jurisdiction in all matters arising out of this contract*", this Court is conscious that an exclusive jurisdiction clause is not, by itself, inconsistent with an arbitration agreement, since such clauses often co-exist with arbitration clauses. However, in the present case, when Clauses 18 and 19 are read together, and in the absence of any words of

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reference to arbitration in Clause 18, the scheme which emerges is that the parties would first attempt to resolve their differences amicably in consultation with the Chairman of the respondent, while all matters arising out of the contract would be subject to the exclusive jurisdiction of the courts at Delhi. As held in ***SMS Limited*** (*supra*), an arbitration agreement must reflect a definitive and mutual intention to refer disputes to arbitration, with the consequence that the jurisdiction of civil courts in respect of such disputes is excluded. Clause 19, which vests exclusive jurisdiction in the courts at Delhi "in all matters arising out of this contract", is consistent with the conclusion that the parties did not intend to provide for arbitration as the adjudicatory mechanism for their disputes.

34. This Court has also considered the decisions of the Hon'ble Supreme Court in ***Rukmanibai Gupta*** (*supra*) and ***Dina Nath*** (*supra*) and this Court in ***Jhankar Banquets*** (*supra*). In each of these cases, the clause in question contemplated a reference of the dispute to the named authority for a decision. In ***Rukmanibai Gupta*** (*supra*), the disputes were to be referred to the named authority "for orders"; in ***Dina Nath*** (*supra*), the disputes were to be decided by the Superintending Engineer; and in ***Jhankar Banquets*** (*supra*), the decision of the Vice-Chairman, DDA on the dispute was to be final and binding. It was from such language, providing for the dispute to be placed before the named authority for decision, that an adjudicatory function was inferred. In ***Dina Nath*** (*supra*), the Hon'ble Supreme Court observed in paragraph 19 that "*as the*

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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". However, Clause 18 of the Work Order in the present case is materially different. It does not provide for any reference of the dispute to the Chairman of the respondent for his decision. Instead, it provides that the dispute "will be resolved amicably in consultation with" him. The operative words of the clause thus contemplate a process of amicable resolution and consultation, and not adjudication of the dispute by the named authority. In the present case, the non-adjudicatory nature of the mechanism emerges from the operative part of the clause itself and not merely from its heading. The aforesaid decisions, therefore, do not advance the case of the petitioner.

35. In view of the aforesaid discussion, this Court is of the view that Clause 18 of the Work Order does not constitute an arbitration agreement under Section 7 of the Act, for the reasons which can be summarised as under:

(a) Clause 18 contemplates only an amicable resolution of the dispute in consultation with Chairman-ACIL. It does not provide for reference of the dispute to the Chairman or any other person for adjudication, nor does it contemplate constitution of an arbitral tribunal or an adjudicatory process.

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(b) Though the decision of the Chairman is stated to be "final and binding", such finality cannot, by itself, convert a non-arbitral dispute resolution mechanism into an arbitration agreement. The nature of the process contemplated by the clause has to be considered, and the process here is one of amicable resolution and consultation, rather than adjudication.

(c) The Chairman-ACIL is an officer of the respondent itself, and the mechanism contemplated is thus reflective of an internal dispute resolution mechanism rather than reference of the dispute to an independent arbitral forum.

(d) The heading "Arbitration and Resolution of Dispute" cannot prevail over the substantive language of Clause 18, which does not contain any agreement to submit disputes to arbitration. The substance of the clause, and not its heading, has to determine the intention of the parties.

(e) Clause 19, when read with Clause 18, is also consistent with the conclusion that the parties contemplated amicable resolution of disputes, with the courts at Delhi having exclusive jurisdiction over matters arising out of the contract, and did not agree to arbitration.

36. Accordingly, in the absence of an arbitration agreement, this Court cannot appoint an arbitrator under Section 11(6) of the Act.

37. The present petition is, therefore, dismissed. Pending

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application, if any, also stands disposed of.

38. However, it is clarified that the petitioner shall be at liberty to avail of such remedies as may be available to it in accordance with law for redressal of its grievances. Nothing expressed hereinabove shall be construed as an expression of opinion on the merits of the claims of the petitioner or the defence of the respondent. The observations made herein are confined to the question of existence of an arbitration agreement between the parties.

39. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

NOVEMBER 19, 2026/zp

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