2025 SCC OnLine SC 2354

In the Supreme Court of India

(BEFORE DIPANKAR DATTA AND AUGUSTINE GEORGE MASIH, JJ.)

Alchemist Hospitals Ltd. ... Appellant;

Versus

ICT Health Technology Services India Pvt. Ltd. ... Respondent.

Civil Appeal No. ..... of 2025 [Arising Out of SLP (Civil) No. 19647/2024][§]

Decided on November 6, 2025

Advocates who appeared in this case :

Mr. Aditya Soni, AOR, Mr. Rajat Gautam, Adv., For Petitioner(s)

Mr. Shamik Shirishbhai Sanjanwala, AOR, Mr. Aditya Tripathi, Adv., Ms. Aarushi Gupta, Adv., Mr. Rishav Gupta, Adv., Mr. Shamik Shirishbhai Sanjanwala, AOR, For Respondent(s)

The Judgment of the Court was delivered by

DIPANKAR DATTA, J.:— Leave granted.

2. The present civil appeal assails the judgment and order of the High Court of Punjab & Haryana at Chandigarh[1] in ARB No. 471 of 2021, whereby a learned Judge of the High Court dismissed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996[2] filed by the appellant.

BRIEF FACTS

3. The material facts relevant to decide the present appeal are as follows:

a. The appellant is a private healthcare institution having its principal establishment at Panchkula, Haryana. Desirous of upgrading its existing hospital-information software to a more advanced, integrated system, the appellant entered into a Software Implementation Agreement[3] dated 1st November 2018 with the respondent, a Bengaluru-based technology company specialising in digital health-management platforms.

b. Under the agreement, the respondent undertook to implement its proprietary hospital-management product known as “HINAI Web Software”[4], a software intended to streamline patient-care operations, billing, diagnostics, and record management across the appellant's facilities.

c. Clause 8.28 of the Agreement which forms the focal point of this

lis is reproduced as follows:

"8.28 - Arbitration

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives, who have authority to settle the controversy and who are at a higher level of management, than the persons with direct responsibility for administration of this Agreement.

If the matter is not resolved by negotiation pursuant to paragraph above, then the matter will proceed to mediation as set forth below:

Any dispute, controversy or claim arising out of or relating in any way to the Agreement/the relationship, including without limitation, any dispute concerning the construction, validity, interpretation, enforceability or breach of the Agreement, shall be resolved by arbitration through senior management comprising respective Chairmen of the two parties (Arbitrators). Should the dispute not be resolved within fifteen (15) days after arbitration, the complaining party shall seek remedies through the courts of law. The demand for arbitration should be made within a reasonable time (maximum 60 days) after the dispute or matter in question has arisen."

d. Following execution of the agreement, the appellant began implementing the HINAI software in November 2018. However, the appellant alleges that there were repeated procedural delays and technical failures on the part of the respondent, including sluggish performance, billing malfunctions, and incomplete integration of diagnostic modules.

e. Relying on assurances from the respondent, the appellant permitted a second attempt at implementation within three months. The HINAI software went live again on 1st January 2020. The appellant alleges that there were numerous operational issues once again and the system was rolled back on 1st April 2020.

f. On even date, the appellant addressed an e-mail to the respondent invoking Clause 8.28 of the Agreement and requesting a mediation meeting between the Chairmen of the two companies at Panchkula or, alternatively, through video-conference in view of pandemic restrictions. The respondent replied on 3rd April, 2020 *vide* e-mail asking for the appellant's cooperation.

g. Appellant called upon the respondent to concur in the appointment of a sole arbitrator and suggested the names of two retired Chief Justices for acting as an arbitrator by a notice dated

29th June, 2020, issued under Sections 11 and 21 of the A&C Act. Respondent acknowledged receipt of the notice by e-mail dated 29th July 2020, sought time to respond, and on 25th August 2020 filed a reply requesting trial of the project one last time.

> Having spent so much of effort by both parties. It was an unfortunate decision of roll back. For ICT it is not only loss of name but also loss in revenue as our cost incurred till date is more than the revenue we have got from Alchemist. We still request Alchemist if there is any way for making the project lie which will be in the best interest of both sides. For which if ITC has to spent some more effort, we will be honouring the same if Alchemist ensures Master date and processes are frozen and agreed one last time.

h. Constrained by the respondent's communication, the appellant approached the High Court invoking Section 11(6) of the A&C Act and praying for the appointment of a sole arbitrator to adjudicate the disputes arising under the Agreement.

IMPUGNED JUDGMENT AND ORDER

4. The High Court observed that on a plain reading of Clause 8.28 of the Agreement, the parties had envisaged a *three-tier process* for resolving disputes: first, by negotiation between senior management executives; next, through mediation between the respective Chairmen of the parties; and finally, by permitting the complaining party to seek remedies through the courts of law if the dispute remained unresolved within fifteen days.

5. The High Court held that the term “arbitration” had been loosely employed in Clause 8.28 and that the true intention discernible from its language was only to provide for negotiation and mediation at an internal company level. It was further observed that the Chairmen of both parties could not be regarded as private or independent adjudicators, and that no element of finality or binding effect was attached to their determination. Also, in the event of a disagreement between the two Chairmen, an outcome not improbable, the process would reach a deadlock, after which the parties were expressly free to approach civil courts.

6. The High Court further observed that nothing in Clause 8.28 indicated any intention of the parties to refer their disputes to a private adjudicatory forum or to abide by its decision. The clause, in the High Court's view, merely contemplated negotiation and mediation without creating a binding arbitral process and hence, it proceeded to dismiss the appellant's application under Section 11(6) of the A&C Act holding that Clause 8.28 is not a valid arbitration agreement.

ISSUE

7. The seemingly simple question that we are tasked to decide in this appeal is whether Clause 8.28 of the Agreement can be considered to be a valid arbitration agreement under the A&C Act.

ANALYSIS

8. We have heard Mr. Puneet Bali, learned senior counsel for the appellant and Mr. Shamik Sanjanwala, learned counsel for the respondent.

9. An "arbitration agreement" is defined by the A&C Act as follows:

> 7. Arbitration agreement.—
>
> (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
>
> (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
>
> (3) An arbitration agreement shall be in writing.
>
> (4) An arbitration agreement is in writing if it is contained in—
>
> (a) a document signed by the parties;
>
> (b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or
>
> (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
>
> (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

10. Modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985, the A&C Act forms the primary legislation for arbitration of disputes, especially for contractual and commercial disputes, giving primacy to the intent of the parties and every step of the way is dictated by party autonomy, as far as practicable. Section 7 of the A&C Act is no exception to this rule and party autonomy is foundational for any reference to arbitration of any dispute and/or difference that arises or might arise by and between the parties.

11. Therefore, Section 7 of the A&C Act posits certain requirements that need to be fulfilled so as to satisfy the attributes of an arbitration agreement. They are (a) there must exist an agreement between the parties to refer a dispute/all disputes to arbitration, either before or

after the said disputes arise; (b) the disputes must be in connection with a defined legal relationship, whether contractual or not, and lastly, (c) the agreement must be in writing.

12. The second and the third requirements of the disputes being in connection with a defined legal relationship and that the agreement must be in writing, are non-issues in the instant case. The crux of the controversy lies in the first requirement, i.e., whether the parties agreed to have the disputes and differences arising by and between them referred to arbitration in terms of Clause 8.28.

13. It is settled law that Section 7 or any other provision of the A&C Act requires that an arbitration agreement need not be in any specific form, apart from compliance with the requirements that Section 7 of the A&C Act ordains. One may profitably refer to the decision in *Smt. Rukmanibai Gupta* v. *Collector, Jabalpur*[5] for this proposition.

14. In *K.K. Modi* v. *K.N. Modi*[6], this Court set out the relevant factors to determine the existence of an arbitration agreement. The indicative factors and attributes are:

> 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.

15. It would further be apposite to refer to *Jagdish Chander* v. *Ramesh Chander*[7] where this Court has succinctly encapsulated the law on the point. The relevant passage therefrom reads:

> 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 : (1998) 92 Comp Cas 30], *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 : (2004) 120 Comp Cas 54] 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.

(emphasis ours)

What, therefore, follows from the above passage is that the mere use of the word "arbitration" is not sufficient to treat the clause as an arbitration agreement when the corresponding mandatory intent to refer the disputes to arbitration and the consequent intent to be bound by the decision of the arbitral tribunal is missing.

16. A similar issue arose before this Court in *Mahanadi Coalfields Ltd.* v. *IVRCL AMR Joint Venture*[8]. The clause in question therein was as follows:

> "15. Settlement of Disputes/Arbitration:
>
> 15.1. It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the company level. The contractor should make request in writing to the Engineer-in-Charge for settlement of such disputes/claims within 30 (thirty) days of arising of the case of dispute/claim failing which no disputes/claims of the contractor shall be entertained by the company.
>
> 15.2. If differences still persist, the settlement of the dispute with government agencies shall be dealt with as per the Guidelines issued by the Ministry of Finance, Government of India in this regard. In case of parties other than government agencies, the redressal of the disputes may be sought in the court of law."

The Court held that the mere use of the word "Arbitration" in the title of the clause without any corresponding substantive part relating to arbitration could not be considered a valid arbitration agreement under Section 7 of the A&C Act.

17. The above rulings lead us to the irresistible conclusion that mere use of the word "arbitration" in a clause of an agreement is not clinching or decisive. Section 7 presupposes an express intention of the dispute/difference being resolved through arbitration and mere reference to the term is not sufficient to meet this threshold. The A&C Act acknowledges the existence of an arbitration agreement based on its substance rather than its form. Regardless of the formal structure, effect has to be given to an arbitration agreement in essence. Arbitration being the creature of a contract, the *ad idem* intention of the parties is paramount to determine whether there exists a valid arbitration agreement. That being said, the invocation of the word "arbitration" nonetheless provides, at the very least, a discernible clue to the parties' underlying intention.

18. The exercise of legal drafting partakes equally of art, science and logic, but we fear that Clause 8.28 does not seem to show allegiance to any. Be that as it may, the task of interpreting the clause is embarked

upon bearing in mind the authoritative rulings in the field.

19. Clause 8.28 of the Agreement states that the parties must first attempt to negotiate the dispute in good faith. This part of the clause is admittedly not disputed in its meaning. The next part of the clause specifies that if the negotiation fails, then the parties would be obligated to mediate in the stated procedure and is then followed by the punctuation (:) colon, following which it prescribes that any dispute arising out of or relating in any way to the Agreement shall be resolved by "arbitration" through senior management comprising respective Chairmen of the two parties (Arbitrators). Moreover, the agreement further stipulates that should the dispute not be resolved within fifteen (15) days after the proposed "arbitration", the complaining party shall seek remedies through the courts of law.

20. The word "arbitration" apart from appearing in the title of the relevant clause has been used 3 (three) times in the body of the clause. It is but obvious that the appellant has sought to rely on this inclusion of the word within the clause to submit that it forms an arbitration agreement.

21. Is mere repetitive use of the word "arbitration" clinching/decisive? It is now time to ascertain in line with the aforesaid decisions, whether the parties' intention was indeed to arbitrate, or merely to delineate a structured process of mediation.

22. Since, at this stage, we are reminded of the decision in the case of *Bangalore Electricity Supply Co. Ltd.* v. *E.S. Solar Power (P) Ltd.*[9], it would be apt to note what was observed. There occurs an interesting passage of what the Court should be minded about while gathering the intentions of the parties in a clause of the contract. It was observed:

> 17. The duty of the court is not to delve deep into the intricacies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e. to say expressed intentions [*Kamla Devi* v. *Takhatmal Land*, 1963 SCC OnLine SC 131 : (1964) 2 SCR 152 : AIR 1964 SC 859]. In seeking to construe a clause in a contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the court has to prefer one above the other in accordance with the settled principles. If one meaning is more in accord with what the court considers to be the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose the former or rather than the latter [*Ashville Investments Ltd.* v. *Elmer Contractors Ltd.*, [1989] Q.B. 488 :

[1988] 3 WLR 867 : [1988] 2 All ER 577 (CA)]. The intention of the parties must be understood from the language they have used, considered in the light of the surrounding circumstances and object of the contract. [*Bank of India* v. *K. Mohandas*, (2009) 5 SCC 313 : (2009) 2 SCC (Civ) 524 : (2009) 2 SCC (L&S) 32]. Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause. *Bihar SEB* v. *Green Rubber Industries* [*Bihar SEB* v. *Green Rubber Industries*, (1990) 1 SCC 731].

23. In a catena of decisions, this Court has ruled that, in essence, an arbitration agreement should have an element of the nature of finality to refer the matters to arbitration. To name a few, one may make a reference to the decisions made in the cases of *Wellington Associates Ltd.* v. *Kirit Mehta*[10], *Bihar State Mineral Development Corporation* v. *Encon Builders*[11], *BGM and MRPL-JMCT (JV)* v. *Eastern Coalfields Limited*[12], *K.K. Modi* (supra) and *Mahanadi* (supra).

24. In *Jagdish Chander* (supra), this Court discussing a similar situation as is in the present case, observed that when an agreement 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. That is precisely the case here.

25. Upon a perusal of Clause 8.28, we are of the view that there is no indication that the proposed “arbitration” was supposed to be final and binding. In fact, the penultimate sentence of the clause stipulates that should the dispute not be resolved within fifteen (15) days after arbitration, the complaining party shall seek remedies through the courts of law. This suggests an attempt at amicable resolution *inter se* rather than a definitive submission to arbitration, failing which the party has the option to proceed to the courts of law.

26. Lastly, the individuals designated as “arbitrators” under the clause are the respective Chairmen of the parties themselves. Ordinarily, arbitration contemplates reference to a neutral third party, a process supported by Section 12 read with the Seventh Schedule of the A&C Act. Here, however, the mechanism envisaged is akin to an internal settlement process between the Chairmen of the two companies. While this does not *ipso facto* disqualify the clause from being an arbitration agreement—since this may be waived under the proviso to Section 12(5)—it remains a significant circumstance in discerning the true intention of the parties.

27. In our view, Clause 8.28 of the Agreement does not evince an

intention to refer disputes to arbitration, for the above-mentioned reasons.

28. Before we part, one other interesting point that has been raised is to be looked into. Whether the non-denial of the arbitration agreement by the respondent in the correspondence between the parties post the notice being issued by the respondent would have any bearing upon the decision to refer the parties to arbitration.

29. In *Powertech World Wide Ltd.* v. *Delvin International General Trading LLC*[13], this Court no doubt took the view that correspondence post issuance of the notice for arbitration can be a factor to determine the intention of the parties. The pertinent passage is extracted hereunder:

> 29. Thus, any ambiguity in the arbitration clause contained in the purchase contract stood extinct by the correspondence between the parties and the consensus ad idem in relation to the existence of an arbitration agreement and settlement of disputes through arbitration became crystal clear. The parties obviously had committed to settle their disputes by arbitration, which they could not settle, as claims and counterclaims had been raised in the correspondence exchanged between them. In view of the above, even the precondition for invocation of an arbitration agreement stands satisfied.

However, a closer perusal of the decision reveals that the decision stands on a much different footing. The respondent therein had in effect consented to the arbitration by stating that they wish to appoint a different arbitrator than the one proposed. No such correspondence exists in the present case. For ease of reference, paragraph 28 of the decision observes:

> ... the respondent had neither denied the existence nor the binding nature of the arbitration clause. On the contrary, it had requested the petitioner not to take any legal action for appointment of an arbitrator, as they wanted to suggest some other name as an arbitrator, that too, *subject to the consent of the petitioner*. <u>This letter conclusively proves that the respondent had admitted the existence of an arbitration agreement between the parties and consented to the idea of appointing a common/sole arbitrator to determine the disputes between the parties.</u> However, thereafter there had been complete silence from its side, necessitating the filing of the present petition under Section 11(6) of the Act by the petitioner.
>
> (emphasis ours)

30. In the case of *Visa International Ltd.* v. *Continental Resources (USA) Ltd.*[14], this Court relying on the correspondence between the parties held that this proves the existence of the arbitration agreement.

This decision too can be distinguished on similar lines as in that case, in response to the applicant's letter invoking the arbitration clause, the respondent merely objected to the names of the arbitrators *inter alia* contending that the suggested arbitration would not be cost-effective and the demand for arbitration itself was a premature one and there was no denial of an arbitration agreement by the respondent therein.

31. In the instant case, we agree that there has indeed been no denial of the existence of an arbitration agreement by the respondent in its responses to the notice issued by the appellant. However, here, when there has indeed been no arbitration agreement in the first place, therefore, subsequent correspondence between the parties cannot displace the original intention. Such correspondence would have indeed been sufficient to displace the original intention if it was unequivocally clear about referring the disputes to arbitration, i.e., the test mentioned under Section 7 of the A&C Act, which does not exist in the instant case. Once we take the view that there has, in fact, been no arbitration agreement in the first place, there exists no option available to the appellant other than approaching the courts of law.

CONCLUSION

32. The impugned final judgment and order of the High Court is affirmed and the appeal is consequently dismissed.

33. Appellant is free to seek remedy in accordance with law before the competent civil court. If the benefit of Section 14 of the Limitation Act, 1963 is claimed, the relevant court may decide such claim appropriately.

34. Parties shall bear their own costs.

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[1] High Court

[2] A&C Act

[3] Agreement

[4] HINAI software

[5] (1980) 4 SCC 556

[6] (1998) 3 SCC 573 : (1998) 92 Comp Cas 30

[7] (2007) 5 SCC 719

[8] (2022) 20 SCC 636

[9] (2021) 6 SCC 718

[10] (2000) 4 SCC 272

[11] (2003) 7 SCC 418 : (2004) 120 Comp Cas 54

[12] 2025 SCC OnLine SC 1471

[13] (2012) 1 SCC 361 : (2012) 1 SCC (Civ) 229

[14] (2009) 2 SCC 55 : (2009) 1 SCC (Civ) 379

[§] 2025 INSC 1289