



ARBITRATION AND CONCILIATION

Beyond Nomenclature: SC Reinforces Substance Over Form in Arbitration Agreement Interpretation

AUTHOR Supriya Bhosale, Rahul Sundaram

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In a significant reaffirmation of the principles governing arbitration agreements, the Supreme Court of India has reaffirmed that the mere incantation of the word “arbitration” cannot salvage a clause that lacks the essential attributes of finality, neutrality, and binding effect. The judgment, delivered on 6 November 2025 by Justices Dipankar Datta and Augustine George Masih in *M/s Alchemist Hospitals vs. M/s ICT Health Technology Services India*, dismissed an appeal against the High Court of Punjab & Haryana’s refusal to appoint an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

The dispute traces its origins to a Software Implementation Agreement dated 1st November 2018 between Alchemist Hospitals, a private healthcare institution based in Panchkula, Haryana, and ICT Health Technology Services India, a Bengaluru-based digital health solutions company. The respondent was tasked with implementing its proprietary “HINAL Web Software” to integrate the appellant’s hospital operations. However, the project encountered repeated technical failures, sluggish performance, and incomplete module integration, culminating in its rollback on 1st April 2020. When attempts at resolution failed, the appellant invoked Clause 8.28 of the agreement, titled “Arbitration,” and subsequently approached the High Court seeking appointment of a sole arbitrator.

Clause 8.28, the centrepiece of the controversy, crafted a three-tiered dispute resolution mechanism. It mandated initial negotiation between senior executives, followed by mediation through the respective Chairmen of both parties, whom the clause curiously labelled as “Arbitrators.” Crucially, it stipulated that if the dispute remained unresolved fifteen days after this process, the complaining party could seek remedies through courts of law. The High Court of Punjab & Haryana, dissected this architecture and concluded that it was not a valid arbitration agreement. The learned Judge observed that the terminology was loosely employed and the true intention was merely to facilitate internal negotiation and mediation, not to create a binding adjudicatory process. The designation of the parties’ own Chairmen as arbitrators was seen as incompatible with the neutrality and independence mandated by Section 12 read with the Seventh Schedule of the A&C Act. Most significantly, the explicit option to approach civil courts after fifteen days negated the finality essential to any arbitration agreement, reducing the entire exercise to a non-binding amicable settlement framework.

Before the Supreme Court, the appellant, strenuously contended that the clause’s repeated use of the word “arbitration” three times within its text evinced a clear intention to arbitrate. He argued that the post-agreement correspondence, where the respondent never denied the existence of an arbitration agreement, should be construed as an implied admission under Section 7(4)(c) of the A&C Act, thereby establishing consensus ad idem. The appellant leaned heavily on decisions such as *Powertech World Wide Ltd. v. Delvin International* and *Visa International Ltd. v. Continental Resources*, where subsequent conduct had clarified ambiguous clauses. However, the respondent countered that substance must triumph over form, and that the clause’s explicit provision for court remedies destroyed the core attribute of finality. He distinguished the precedents, arguing they involved unequivocal post-contractual admissions of an arbitration obligation, which was conspicuously absent here.

The Supreme Court anchored its analysis in the seminal six-factor test laid down in *K.K. Modi v. K.N. Modi* (1998) 3 SCC 573, which mandates that a valid arbitration agreement must contemplate a binding decision, impartial adjudication, and enforceability in law. The Court emphasized that Section 7 of the A&C Act, modelled on the UNCITRAL Model Law, demands an express intention to refer disputes to a private tribunal whose decision will be final. The judgment meticulously examined Clause 8.28’s structure, noting that the fifteen-day timeline and the explicit court remedy provision demonstrated that the parties never intended the process to be conclusive. The designation of the Chairmen as arbitrators was a significant, albeit not decisive, factor indicating an internal dispute resolution mechanism rather than true arbitration. The Court reiterated the principle from *Jagdish Chander v. Ramesh Chander* that if a decision is not final or permits civil suits, it cannot be termed arbitration. It also distinguished *Mahanadi Coalfields Ltd. v. IVRCL AMR Joint Venture*, where merely titling a clause “Arbitration” without substantive provisions had been held insufficient.

On the critical question of post-agreement conduct, the Court drew a sharp line. While acknowledging that correspondence could clarify ambiguous clauses, it held that such conduct cannot conjure an arbitration agreement into existence where none existed originally. The test, as per *Powertech* and *Visa International*, required the respondent to have unequivocally admitted the arbitration obligation or proposed an alternative arbitrator. In the instant case, the respondent’s replies merely sought reconciliation and another trial run, falling far short of the required clear and unambiguous consent. As the Court reasoned, once it is established that no arbitration agreement existed ab initio, subsequent correspondence cannot displace the original intention unless it unambiguously demonstrates a fresh consensus to arbitrate, which was absent here.

The Supreme Court, after a comprehensive analysis, affirmed the High Court's judgment and dismissed the appeal, holding that Clause 8.28 failed to meet the statutory prerequisites of Section 7. The Court clarified that the appellant remained free to pursue remedies before the competent civil court, and if it claimed the benefit of Section 14 of the Limitation Act to save limitation, the civil court could decide that question appropriately. The parties were directed to bear their own costs, closing the chapter on this arbitration dispute.

This judgment serves as a timely reminder to drafters that arbitration clauses demand precision and clarity, not mere label-sticking. It reinforces that Indian courts will not rescue poorly drafted provisions by reading into them an intention that the plain language negates. By insisting on the core attributes of finality, impartiality, and binding commitment, the Supreme Court has fortified the integrity of arbitration as a distinct and reliable dispute resolution mechanism, distinct from non-binding mediation or negotiation. For the insolvency and commercial world, where swift and final resolution is paramount, this decision underscores that the path to arbitration must be clearly marked, not obscured by ambiguous processes that lead back to the courthouse door.

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