



ARBITRATION AND CONCILIATION

THE ARBITRATION CLAUSE IN THE WORK ORDERS/CONSULTING AGREEMENTS WOULD NOT BE BINDING IF MOU, BEING BASE OF THE CLAIM DOES NOT INCLUDE AN ARBITRATION CLAUSE: STATES PUNJAB AND HARYANA HIGH COURT

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In a recent judgment¹ the [High Court of Punjab and Haryana](#) at Chandigarh held that if the claim is based particularly and exclusively on a Memorandum of Understanding, which does not include an arbitration clause, then the existence of an arbitration clause in the Consulting Agreements/Purchase Orders will not bind the parties to [arbitration](#). The court was of the opinion that if the claim is based upon such an agreement that does not contain an arbitration clause, it would not bind parties.

The appeal was filed challenging the order passed by the Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram rejecting the application of appellant – defendant no.1 filed under Order VII Rule 11 (d) of the Code of Civil Procedure read with Section 8 of the Arbitration & Conciliation Act, 1996 (“Arbitration Act”), for rejecting the plaint in terms of Clause 16 of the Consulting Agreement, which provides for referring the matter for arbitration and to return the plaint filed respondent no.1- plaintiff in view of the Consulting Agreement viz-a-viz confirmation of jurisdiction with laws and Courts of Scotland and for dismissal of the suit.

The counsel for the appellant contended that the lower Court misread the provisions of the agreements the parties entered and has proceeded on the terms of Memorandum of Understanding without taking into consideration the Purchase Orders that were executed between the parties by signing and stamping each Consulting Agreement before the commencement of work and each of these agreements provides for an arbitration clause and applicable laws of Scotland.

The counsel for the respondent argued that the base of the suit and claim for loss and harm, rests upon the Memorandum of Understanding executed between the parties which was breached and not Purchase Orders as the parties never intended to be governed by the Purchase orders and the same is apparent from the emails, wherein it is specifically admitted by the appellant-defendant no.1 that the Purchase orders and Consulting Agreements were to be circulated only for the purposes of internal audit.

The court observed that the relationship between the parties is governed by the Memorandum of Understanding dated 17/03/2017 which was contracted for five years, renewable in March 2022 which is the basis on which and from where the long-term relationship between the parties was initiated. The Purchase Order accompanying the Consulting Agreement was never a part of their work relationship.

The court further observed that the reliefs claimed by the respondent no.1- plaintiff are arising exclusively out of the breach of the Memorandum of Understanding and do not flow from the Purchase Orders and/or Consulting Agreements and it is not in dispute that the Memorandum of Understanding does not have an arbitration clause. The arbitration clause, in the Consulting Agreements, would not be applicable and binding to the parties for the claim in the suit.

The court stated that *“The claim which is based upon an agreement, which does not include an arbitration clause, would not bound the parties. The plea of the appellant that the suit deserves to be dismissed as there is an arbitration clause, therefore, cannot sustain.*

The judgments on which reliance has been placed by the counsel for the appellant, as referred to above, would not be applicable to the case in hand.”

Accordingly, the court dismissed the appeal observing that there is no merit.

¹ M/s Soben Contract and Commercial Ltd. VERSUS M/s Qonquests Technical Solutions Pvt. Ltd. and others