

29.09.2026  
Court No.07  
Item No.2  
AP

**HIGH COURT AT CALCUTTA  
CIRCUIT BENCH AT JALPAIGURI**

**AP 10 of 2026**

**PCM Resorts and Developers Private Limited  
Vs.  
The State of West Bengal and Ors.**

Mr. Nabankur Paul  
Ms. Sutapa Sen Paul  
Mr. Bodhisatya Ghosh

... For the Petitioner.

Mr. Jagriti Mishra, AAAG  
Mr. Abhijit Raha

... For the State.

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 seeks appointment of arbitrator since the petitioner called upon the respondents to so appoint one and the respondent has remained silent.

2. The subject matter of the dispute between the parties was development of Star Category Eco Resort-1 in Bhorer Alo Eco Tourism Project at Gajoldoba, Jalpaiguri, West Bengal. In addition to development of the said eco resort a lease agreement was signed by and between the Government of West Bengal, Department of Tourism and the applicant PCM Resorts and Developers Private Limited.

3. Disputes and differences have arisen between the parties whereupon the applicant called upon the respondents to appoint an arbitrator after attempts of amicable resolution of the disputes failed. Upon the

respondents failing to appoint any arbitrator or nominate one to enter into reference the subject application has been filed by the applicant.

4. Mr. Jagriti Mishra, learned counsel for the applicant/State submits that the purported arbitration clause reliance upon by the applicant, is not a conclusive and binding arbitration agreement between the parties. He relies upon a decision of the Supreme Court in the case of **Jagdish Chander Vs. Ramesh Chander & Ors.** reported in **(2007) 5 SCC 719**. Reliance is also placed upon a decision of **Nagreeka Indcon Products Pvt. Ltd. Vs. Cargocare Logistics (India) Pvt. Ltd.** reported in **2026 INSC 384**.

5. Per contra, learned counsel for the petitioner has placed a communication addressed to the applicant by the respondent dated 18<sup>th</sup> April, 2024. As part of continued correspondence dated 10<sup>th</sup> October, 2023 and by reason of the said communication dated 18<sup>th</sup> April, 2024 the termination of contract between the parties was reiterated.

6. Mr. Nabankur Paul, learned counsel for the petitioner, to counter the argument of Mr. Jagriti Mishra, learned counsel for the State, has placed reliance upon a decision of **Babanrao Rajaram Pund Vs. Samarth Builders and Developers and Anr.** reported in **(2022) 9 SCC 691** particularly paragraph 23 to 30 thereof.

7. This Court has carefully considered the argument advanced by the parties. Article 13 of the Contract cum Lease executed by and between the parties is set out hereinbelow:-

“ARTICLE – 13: DISPUTE RESOLUTION

(1) Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in discussion with each other.

(2) The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

(3) The work under the Contract shall, however, continue during the proceedings and no payment due or payable to the concerned party shall be withheld (except to the extent disputed) on account of initiation, commencement or pendency of such proceedings.

(4) The fees and expenses of conciliation if any, shall be borne equally by the parties.

(5) In the event no amicable resolution or settlement is reached within a period of thirty (30) days of the date on which the dispute or the difference arose, such dispute or difference shall be referred to arbitration by either of the parties. The sole Arbitrator should be a Retired High Court Judge or a Retired Chief Secretary/Additional Chief Secretary/Principal Secretary /Secretary to the Government of West Bengal or a Retired Auditor General of Government of West Bengal. The provisions of the Arbitration and Conciliation Act, 1996 would apply for the arbitration proceedings. The Arbitral Award given by the Sole Arbitrator shall be a reasoned order.

(6) The Contract shall be governed by and constructed according to the laws in force in India. The parties hereby submit to the exclusive jurisdiction of the Courts within the original jurisdiction of High Court at Calcutta.”

8. What is clear and explicit from the aforesaid clause is that the parties had unconditionally agreed to first have disputes and differences themselves amicably resolved by discussion. Upon failure of the discussion or where no amicable resolution or settlement was reached within 30 days of the raising of such disputes and differences, the dispute or difference was to be mandatorily referred to arbitration by either of the parties.

9. It is, therefore, clear that the parties had unconditionally and unequivocally decided to have their disputes resolved through arbitration under the provisions of the Arbitration and Conciliation Act, 1996 if amicable resolution of disputes had failed.

10. In the **Jagdish Chander** (supra) decision the clause in the agreement which was held not to constitute an arbitration agreement was that the disputes between the partners during the continuation of the partnership would be mutually decided by the partners or shall be referred for arbitration if the parties so determined.

11. Clearly, therefore, there was no concluded arbitration agreement by and between the parties. The parties were required to contingently agree to refer the disputes to arbitration. The arbitration agreement was required to be formally entered into or the disputes were required to be resolved mutually between the parties. The

examples cited at paragraph 8 of the decision by referring to several earlier decisions of the Supreme Court clearly indicate situations where the Court was required to come to a conclusion that there was no arbitration agreement existing between the parties. Such examples were (a) parties can if they so desire refer their disputes to arbitration (b) the disputes shall be referred to arbitration if the parties so determined.

12. In each of the aforesaid cases, there was no conclusive arbitration agreement and the parties were required to come to an agreement to have their disputes to be resolved by an arbitrator.

13. In the case of ***Nagreeka Indcon Products Pvt. Ltd.*** (supra) the arbitration agreement between the parties was also different from the clause available in the instant case. In Clause 25 of the Contract that was the subject matter of dispute in ***Nagreeka Indcon Products Pvt. Ltd.*** (supra) was that the difference of opinion or dispute thereunder can be settled by arbitration in India.

14. It is in this context that the Supreme Court held in ***Nagreeka Indcon Products Pvt. Ltd.*** (supra) that there was no arbitration agreement between the parties. The facts of the instant case are substantially different from the facts of the case of ***Jagdish Chander*** (supra) and ***Nagreeka Indcon Products Pvt. Ltd.*** (supra).

15. In Article 13, set out hereinabove, it is clear that the parties only give themselves an opportunity to resolve

the disputes and differences amicably before proceeding for arbitration.

16. In the event the dispute was not resolved within 30 days of it being raised, it is clearly specified that such dispute or differences shall be referred to arbitration by either of the parties. There is no need for independently mentioning the parties to specify that the award between the parties would have to be conclusive and binding. The reason therefor is that the provisions of the Act of 1996 was to apply to the arbitration proceedings, which make an award binding.

17. It would be appropriate in this context to set out the observations of the Supreme Court in the case of ***Babnrao Rajaram Pund*** (supra) particularly paragraph 23 to 29.

“23. Adverting to the case in hand, it may be seen that the contents and the nature of Clause 18 are substantially different from the dispute resolution pacts in *K.K. Modi* [*K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573] , *Jagdish Chander* [*Jagdish Chander v. Ramesh Chander*, (2007) 5 SCC 719] , or *Encon Builders* [*Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd.*, (2003) 7 SCC 418] . We say so for three reasons. *Firstly*, apart from the fact that Clause 18 of the development agreement uses the terms “arbitration” and “arbitrator(s)”, it has clearly enunciated the mandatory nature of reference to arbitration by using the term “*shall be referred to arbitration of a sole arbitrator mutually appointed, failing which, two arbitrators, one to be appointed by each party to dispute or difference*”. *Secondly*, the method of appointing the third arbitrator has also been clearly mentioned wherein the two selected arbitrators are to appoint a third arbitrator. *Finally*, even the governing law was chosen by the parties to be “the Arbitration and Conciliation Act, 1996 or any re-enactment

thereof.” These three recitals, strongly point towards an unambiguous intention of the parties at the time of formation of the contract to refer their dispute(s) to arbitration.

24. We are, therefore, of the firm opinion that the High Court fell in error in holding that the appellant's application under Section 11 was not maintainable for want of a valid arbitration clause. We find that Clause 18 luminously discloses the intention and obligation of the parties to be bound by the decision of the tribunal, even though the words “final and binding” are not expressly incorporated therein. It can be gleaned from other parts of the arbitration agreement that the intention of the parties was surely to refer the disputes to arbitration. In the absence of specific exclusion of any of the attributes of an arbitration agreement, the respondents' plea of non-existence of a valid arbitration clause, is seemingly an afterthought.

25. Even if we were to assume that the subject clause lacks certain essential characteristics of arbitration like “final and binding” nature of the award, the parties have evinced clear intention to refer the dispute to arbitration and abide by the decision of the tribunal. The party autonomy to this effect, therefore, deserves to be protected.

26. The deficiency of words in agreement which otherwise fortifies the intention of the parties to arbitrate their disputes, cannot legitimise the annulment of arbitration clause. A three-Judge Bench of this Court in *Enercon (India) Ltd. v. Enercon GmbH* [*Enercon (India) Ltd. v. Enercon GmbH*, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] dealt with an arbitration clause that did not provide for a method of electing the third arbitrator. The Court held that “*the omission is so obvious that the court can legitimately supply the missing line.*” The line “the two arbitrators appointed by the parties shall appoint the third arbitrator” was read into the clause so as to give effect to it. It was further held that : (SCC p. 39, para 88)

“88. In our opinion, the courts have to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or construing an arbitration agreement or arbitration clause. Therefore, when faced with a seemingly unworkable arbitration clause, it would be the duty of the court to make the same workable within the permissible limits of

the law, without stretching it beyond the boundaries of recognition. In other words, a common sense approach has to be adopted to give effect to the intention of the parties to arbitrate. In such a case, the court ought to adopt the attitude of a reasonable business person, having business common sense as well as being equipped with the knowledge that may be peculiar to the business venture. The arbitration clause cannot be construed with a purely legalistic mindset, as if one is construing a provision in a statute.”

27. The UNCITRAL Model Law on International Commercial Arbitration, 1985 from which the Arbitration and Conciliation Act, 1996 originated, envisages minimal supervisory role by courts. When Section 7 or any other provisions of the Act do not stipulate any particular form or requirements, it would not be appropriate for a court to gratuitously add impediments and desist from upholding the validity of an arbitration agreement.

28. There is no gainsaying that it is the bounden duty of the parties to abide by the terms of the contract as they are sacrosanct in nature, in addition to, the agreement itself being a statement of commitment made by them at the time of signing the contract. The parties entered into the contract after knowing the full import of the arbitration clause and they cannot be permitted to deviate therefrom.

29. It is thus imperative upon the courts to give greater emphasis to the substance of the clause, predicated upon the evident intent and objectives of the parties to choose a specific form of dispute resolution to manage conflicts between them. The intention of the parties that flows from the substance of the agreement to resolve their dispute by arbitration are to be given due weightage. It is crystal clear to us that Clause 18, in this case, contemplates a binding reference to arbitration between the parties and it ought to have been given full effect by the High Court.”

18. One need not go as far as the observations of the Supreme Court in the case of **Babnrao Rajaram Pund** (supra), which is set out hereinabove. This Court has no hesitation to hold that there was indeed a conclusive

arbitration agreement by and between the parties in the facts and circumstances of the case.

19. Additionally thereto, in the light of the observations of the Supreme Court in the case of **Babnrao Rajaram Pund** (supra), this Court is required to take a pragmatic and practical approach to the arbitration agreement between the parties set out hereinabove and refer them to arbitration.

20. Having regard to the discussions made hereinabove, the subject application under Section 11 of the Act of 1996 is allowed.

21. This Court appoints Justice Manjula Chellur, a retired Chief Justice of this Court, now stationed at Kolkata (Mobile No.8017366666; Email ID: manjulachellur@gmail.com), to enter upon the reference and pass an award in terms of the Arbitration and Conciliation Act, 1996.

22. The fees of the arbitrator shall either be mutually agreed by and between the parties or be governed by the Schedule 4 of the Arbitration and Conciliation Act, 1996.

23. With the aforesaid directions, AP 10 of 2026 is allowed and disposed of.

24. The parties as well as the Registry shall communicate a copy of this order to the appointed arbitrator.

25. There shall be no order as to costs.

26. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**(Rajasekhar Mantha, J.)**