

A dispute resolution clause stating that disputes “can be settled by arbitration” does not constitute a binding arbitration agreement under the Arbitration and Conciliation Act, 1996, because it indicates only the possibility of arbitration and not a mandatory or enforceable obligation to refer disputes to arbitration

The **Supreme Court** in the case of **Nagreeeka Indcon Products vs Cargocare Logistics (India) [2026 INSC 384] dated April 17, 2026**, has held that a dispute resolution clause stating that disputes “can be settled by arbitration” does not constitute a binding arbitration agreement under the Arbitration and Conciliation Act, 1996, because it indicates only the possibility of arbitration and not a mandatory or enforceable obligation to refer disputes to arbitration. Where the clause contemplates or necessitates further consent of the parties before reference, it is merely an agreement to enter into an arbitration agreement in future, and not an arbitration agreement in law.

The Court observed that arbitration is founded on party autonomy and mutual intention, and that parties must agree to arbitration as the chosen dispute resolution mechanism for an arbitral tribunal to derive jurisdiction. At the Section 11 stage, the court’s scrutiny is confined to a prima facie examination of the existence of an arbitration agreement, and not to a detailed adjudication on merits.

The Court examined the word “can” in its ordinary meaning and held that it denotes capacity, capability, or possibility, and not a mandate. It contrasted “can” with “shall”, observing that while “shall” ordinarily signals obligation, “can” indicates only a choice available to the parties. Applying settled principles of contractual interpretation, the Bench held that the words chosen by the parties are the most reliable manifestation of their intent and courts cannot impute an obligation not intended by the contracting parties.

The Court further observed that a valid arbitration agreement must disclose a determination and obligation to go to arbitration, and not merely a possibility of doing so. The clauses contemplating future consent or further agreement for arbitration do not amount to binding arbitration agreements. On the language of Clause 25, the Court found that it merely kept open the future possibility of arbitration and therefore required fresh consensus between the parties after disputes arose.