Arbitration Clause Enforceable even if the Agreement is not signed, but acted upon by the parties: Supreme Court

Glencore International AG v. M/s. Shree Ganesh Metals and Another[1]

Author by: Lokesh Bhola, Managing Partner and Sanjana Manchanda, Associate

Introduction

In a significant ruling emphasizing the principles of commercial realism and the enforceability of Arbitration Agreements, the Supreme Court of India in *Glencore International AG v. M/s. Shree Ganesh Metals and Another* held that an Arbitration clause is binding even if the underlying contract is unsigned, provided the parties have demonstrated acceptance through their conduct. The Judgment set aside the Delhi High Court's decisions and referred the dispute to Arbitration under the London Court of International Arbitration (LCIA). This case underscores the Court's pro-arbitration stance, prioritizing substance over form in international commercial disputes, and reinforces that Arbitration Agreements can be inferred from emails, performance, and other records, aligning with e-commerce practices.

Provisions of the law under question

The core legal framework revolves around Part II of *the Arbitration and Conciliation Act, 1996*, which deals with the enforcement of foreign arbitral awards under the New York Convention. Key provisions include:

1. Section 44: Defines a "foreign award" as an arbitral Award arising from a written Arbitration Agreement, enforceable in India subject to certain conditions.
2. Section 45: Empowers a judicial authority to refer parties to Arbitration in matters involving an Agreement under Section 44, unless the Agreement is prima facie null and void, inoperative, or incapable of being performed. The provision mandates a referral unless such invalidity is evident, without conducting a full trial on the Agreement's existence.

The judgment also references Section 7 of the Act, which defines an Arbitration Agreement as one in writing, including exchanges of letters, telegrams, or electronic communications that provide a record of the Agreement. Sub-section 7(4) specifies that such Agreements can be inferred from:

1. Section 7(4)(b): Exchanges of letters or electronic means.
2. Section 7(4)(c): Statements of Claim and Defense where one party alleges the Agreement and the other party does not deny it.
3. Reference in a contract to a document containing an Arbitration clause of Section 7(5), provided there is conscious acceptance.

The Court reiterated that signatures are not mandatory; the agreement need only be in writing and reflect mutual intent. This aligns with precedents like *Govind Rubber Limited v. Louis Dreyfus Commodities Asia Private Limited* [2] and *Caravel Shipping Services Private Limited v. Premier Sea*

[1] MANU/SC/1160/2025

[2] MANU/SC/1209/2014

Foods Exim Private Limited[3], which emphasize inferring Agreements from conduct in commercial contexts.

Procedural History and Relevant Facts

The dispute arose between Glencore International AG, a Swiss commodity trading company and Shree Ganesh Metals, an Indian zinc alloy producer. The parties had prior contracts in 2011-2012 for zinc metal supplies, all containing LCIA arbitration clauses with London as the seat.

In March 2016, negotiations began for a new contract for 6,000 metric tons of zinc from March 2016 to February 2017. Key exchanges included:

1. Glencore's email on 10.03.2016, proposing terms, including provisional pricing based on the average of 10 LME (London Metal Exchange) days, a Standby Letter of Credit (SBLC), and incorporating terms from the 2012 contract.
2. Shree Ganesh's reply on 11.03.2016, confirming "the same terms" but modifying pricing to the average of the last 5 LME days.
3. Glencore's acknowledgment and forwarding of the signed contract incorporating the modification, including an Arbitration clause mirroring the 2012 clause.

The Respondent did not sign the contract, however, the same was acted upon by the Respondent. The conduct of the parties is relevant to define whether there is any existence of the Arbitration Agreement and in the present matter the conduct clearly defined that there existed a valid Arbitration Clause. The Appellant supplied 2,000 metric tons, raising 8 invoices referencing the contract. The Appellant furnished SBLCs through HDFC Bank on 22.04.2016, and 17.11.2016, all quoting the contract number. Further emails from the Respondent in September 2016 and February 2017 explicitly referenced the contract and promised performance.

Disputes escalated over delayed SBLCs and pricing, leading the Appellant to encash the SBLCs in February 2017. The Respondent filed a suit in the Delhi High Court seeking declaration of invalid invocation, recovery of US$1.2 million, and injunctions.

The Appellant filed an Application under Section 45 for referral to Arbitration on the basis of the Arbitration Clause. A Single Judge rejected the Application vide Order, dated 02.11.2017, holding no concluded contract existed due to lack of signatures and unaccepted modifications. A Division Bench affirmed the same on 14.11.2019, focusing erroneously on the 2012 contract. Thus, the present Appeal was filed by the Appellant.

Issues involved

The primary issue was: Whether a binding Arbitration Agreement existed under the 2016 contract, despite it being unsigned by the Respondent, given the parties' conduct?

Subsidiary issues included:

1. Could the Arbitration clause be inferred from email exchanges and performance?
2. Was reliance on the 2012 contract necessary, or did the 2016 contract stand independently?
3. The scope of judicial inquiry under Section 45: Should it be prima facie or a full adjudication?

[3] (2019) 11 SCC 461

Analysis and application of Law to Facts

The Supreme Court analysed the High Court's oversight of key facts demonstrating the Respondent's acceptance, which is evident from the supplies of 2,000 metric tons, invoices, SBLCs, and emails all referencing the 2016 contract. The Court held that the Respondent's modification to pricing was accepted by the Appellant, and its actions manifested consent, binding it to Clause 32.2 i.e., the Arbitration Clause in the Contract.

Applying Section 7 principles, the Court noted Arbitration Agreements need not be signed if recorded in writing and *ad idem* is *prima facie* shown. It rejected the Respondent's plea that references were to emails alone, as the contract number post-dated them. The Suit itself pertained to SBLCs under the 2016 Contract, underscoring its existence.

On Section 45, the Court reaffirmed a *prima facie* standard relied on *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*, 2005[4]; *Interplay between Arbitration Agreements and Stamp Act*, 2024[5], leaving detailed validity to the tribunal. It distinguished cases like *M.R. Engineers v. Som Datt Builders* (2009)[6] and *NBCC (India) Ltd. v. Zillion Infraprojects* (2024)[7], as they involved mere references without acceptance, unlike here.

Conclusion

The Supreme Court's ruling sets a precedent for enforcing Arbitration clauses even in unsigned contracts where conduct implies acceptance, promoting efficiency in international trade. By setting aside the High Court's orders and referring the dispute to Arbitration, it reinforces India's arbitration-friendly jurisprudence. This decision cautions parties against repudiating Agreements post-performance and highlights the importance of documenting intent in digital communications.

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[4] (2005) 7 SCC 234

[5] (2024) 6 SCC 1

[6] (2009) 7 SCC 696

[7] (2024) 7 SCC 174