



ARBITRATION AND CONCILIATION

‘May’ Does Not Mean ‘Must’: Supreme Court Refuses Arbitration Reference

AUTHOR Ayush Shukla

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Introduction

In a notable decision on interpreting arbitration clauses, the Hon'ble Supreme Court of India in BGM AND M-RPL-JMCT (JV) v. Eastern Coalfields Ltd. [SLP (C) Diary No. 21451/2024], clarified the essentials required for a clause to be considered a binding arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996. The Court reiterated that not every reference to arbitration within a contract amounts to a valid arbitration agreement, especially where language merely allows arbitration rather than mandates it. The ruling by Justices Pamidighantam Sri Narasimha and Manoj Misra is aligned with precedents like Jagdish Chander v. Ramesh Chander and Mahanadi Coalfields Ltd. v. IVRCL AMR JV, reinforcing how courts should assess the intent and language of arbitration clauses.

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Factual Background

The appellant, BGM AND M-RPL-JMCT (JV), had a commercial contract with Eastern Coalfields Ltd. for transport and handling services. Disputes arose during execution, prompting the appellant to invoke Clause 13 of the General Terms and Conditions (GTC) and seek arbitration under Section 11(6) of The Arbitration and conciliation Act 1996.

Clause 13, titled "Settlement of Disputes", laid out a two-step process: internal resolution through company authorities, and if unresolved, a provision that stated disputes "may be sought through Arbitration and Conciliation Act, 1996." for parties other than government agencies.

The appellant treated this as a valid arbitration clause and approached the High Court to appoint an arbitrator. The Calcutta High Court, however, rejected the application, finding that Clause 13 lacked the requisite legal force to be an arbitration agreement.

Submissions by the Parties

Appellant's Submissions

The appellant argued that the clause permitted either party to initiate arbitration and, once exercised, it became binding. They claimed the High Court misapplied the precedents cited and overlooked that the use of "may" still provided a legitimate choice to initiate arbitration.

They invoked the "*kompetenz-kompetenz*" principle under Section 16 of The Arbitration and conciliation Act 1996, contending that any challenge to the arbitration agreement's validity should be decided by the arbitral tribunal, not the courts at the referral stage. They also pointed to Section 11(6A) of The Arbitration and conciliation Act 1996, which limits judicial review to a prima facie check.

Respondent's Submissions

Eastern Coalfields Ltd. maintained that Clause 13 did not reflect a binding arbitration agreement under Section 7. It merely allowed arbitration as an option subject to future agreement, not a current obligation.

They also cited Clause 32 of the Instructions to Bidders, which vested jurisdiction over disputes with the local District Court, further affirming the intent to resolve disputes judicially rather than through arbitration.

Judgment

The Supreme Court dismissed the appeal, agreeing with the High Court that Clause 13 was not a valid arbitration agreement under Section 7. The Court emphasized that the phrase “may be sought through arbitration” only indicates a possibility, not a mandatory commitment.

The Court held that for an arbitration clause to be valid, there must be a clear consensus ad idem (mutual agreement) to arbitrate. The permissive language used in Clause 13 lacked this essential feature.

Citing Jagdish Chander and Mahanadi Coalfields, the Court reaffirmed that clauses suggesting arbitration as a potential step rather than a definite obligation do not fulfill Section 7’s requirements.

Although Section 11(6A) limits court scrutiny to the “existence” of an arbitration agreement, the Court clarified that this still requires a prima facie reading of the contract. Here, Clause 13 merely laid down an internal resolution process and referred to arbitration as an optional, future mechanism thus failing the Section 7 test.

Implications for Arbitration and Contractual Trends in India

1. Clarity on the Language of Arbitration Clauses

The decision underscores that contractual language must demonstrate a firm obligation to arbitrate. Terms like “may be referred to arbitration” are insufficient. Instead, phrases such as “shall be referred to arbitration” must be used to establish a binding agreement.

2. Prima Facie Examination by Courts

The ruling confirms that courts, even within their limited role under Section 11(6A), are empowered to conduct a prima facie examination to determine whether an arbitration agreement exists. This means vague or tentative clauses can be scrutinized and dismissed early, avoiding unnecessary arbitration referrals.

3. Significance of Internal Dispute Resolution Mechanisms

While internal resolution steps may help de-escalate disputes, they do not substitute for a formal arbitration clause. This judgment helps draw a clear line between internal redressal procedures and arbitration, ensuring both are distinctly drafted if intended.

4. Juridical Seat and Jurisdiction Clauses

Clause 32, which refers disputes to civil courts, was not central to the decision. However, the Court clarified that jurisdiction clauses are not inconsistent with arbitration clauses per se they can coexist and may merely identify the judicial seat of arbitration. Still, without a valid arbitration clause, such jurisdiction clauses guide parties toward litigation.

5. Doctrinal Reinforcement

The Court reiterated the principles laid down in Jagdish Chander and Mahanadi Coalfields, making it clear that optional dispute resolution clauses cannot be construed as arbitration agreements. There must be a binding and conscious intention to arbitrate.

Conclusion

The BGM AND M-RPL-JMCT (JV) v. Eastern Coalfields Ltd. judgment offers a strong reaffirmation of Indian arbitration jurisprudence, requiring rigor in drafting arbitration agreements. It emphasizes that arbitration can only be initiated where the contract unambiguously mandates it.

For legal professionals and corporates, this is a vital lesson: vague or discretionary clauses are insufficient for arbitration. Clarity, mutual consent, and the use of mandatory language are essential to enforce such agreements. Courts, meanwhile, are empowered to reject weak claims at the Section 11 stage without examining extensive trials.

This decision enhances the credibility of arbitration in India by ensuring only genuinely agreed-upon arbitrations proceed. As India positions itself as a global arbitration hub, such clarity is crucial in reducing procedural disputes and ensuring contractual certainty.

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