



ARBITRATION AND CONCILIATION

Strengthening India's Arbitration Regime: SC on Unsigned Arbitration Agreement

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Introduction

In a significant ruling that strengthens the enforceability of arbitration agreements in India, the Supreme Court in *Glencore International AG vs. Shree Ganesh Metals & Anr*^[1] has clarified that the mere absence of a signature on an arbitration clause does not, by itself, render it invalid. What matters is the clear intention of the parties to submit disputes to arbitration, which can be established through written communication, conduct, or other documentary evidence. By emphasising consent over formalities, the Court has reinforced the principle that arbitration is rooted in party autonomy and cannot be defeated by technical objections.

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Background And Context

The case arose out of a commercial dispute where one of the parties challenged the validity of the arbitration agreement on the ground that it had not been formally signed. The appellant, Glencore International AG (a Swiss company), and the respondent, Shree Ganesh Metals (an Indian concern), had entered into four earlier signed contracts containing London-seated LCIA arbitration clauses. In 2016, they negotiated a fifth contract for supply of 6,000 MT zinc. The terms were confirmed via email exchanges dated 10–11 March 2016, including modification of pricing terms, and Glencore issued Contract No. 061-16-12115-S signed by it and forwarded for countersignature.

The contention was that without signatures, the clause could not bind the parties under the Arbitration and Conciliation Act, 1996. On the other hand, the opposing party argued that their conduct, email exchanges, and written communications clearly reflected mutual consent to refer disputes to arbitration, and that the absence of a physical signature was merely a technicality. The matter reached the Supreme Court at a time when India has been actively strengthening its arbitration framework to promote faster and more efficient dispute resolution. The Court was called upon to decide whether the lack of a signature would invalidate an arbitration clause, or whether the broader principle of party autonomy should prevail when there is sufficient evidence of consent.

Legal Framework

The validity of arbitration agreements in India is governed by the Arbitration and Conciliation Act, 1996, which is largely based on the UNCITRAL Model Law. The central provision in this regard is Section 7, which defines what constitutes an arbitration agreement.

- Section 7(1): An arbitration agreement is an agreement by the parties to submit disputes, whether present or future, to arbitration.
- Section 7(2): Such an agreement may be in the form of an arbitration clause in a contract or a separate agreement.
- Section 7(3): The arbitration agreement must be in writing.
- Section 7(4): The requirement of “writing” is satisfied if the agreement is contained in: a document signed by the parties; an exchange of letters, telex, telegrams, or other means of telecommunication, including electronic forms; or an exchange of statements of claim and defence in which the existence of the agreement is not denied.
- Section 7(5): A reference in a contract to another document containing an arbitration clause may also constitute an arbitration agreement, provided the contract is in writing and the reference makes the clause part of the agreement.

Since the arbitration was foreign-seated (London), Sections 44–45 of the Act (Part II) also applied, requiring only a “written agreement” and allowing referral to arbitration unless prima facie shown to be null and void, inoperative, or incapable of performance.

Judgement And Reasoning

Building on this framework, the Supreme Court clarified that while Section 7(3) requires an arbitration agreement to be “in writing,” the law does not demand signatures for its validity. What truly matters, as reflected in Section 7(4), is that the intention to arbitrate is recorded, whether through signed documents, correspondence, electronic communication, or even pleadings where the existence of the agreement is not denied. The Court held that a missing signature cannot invalidate an arbitration clause if other evidence establishes clear consent to arbitrate. Emphasizing that rigid formalities would undermine arbitration's purpose as a flexible and efficient alternative to litigation, the bench dismissed the objection that the absence of signatures rendered the clause unenforceable. By reaffirming party autonomy and giving primacy to substance over form, the Court aligned Indian arbitration law with global standards and reinforced confidence in the arbitral process.

Implications Of the Ruling

This judgment delivers a strong push to India's arbitration regime by settling doubts over the enforceability of unsigned agreements. It reassures businesses and investors that what truly matters under Section 7 of the Arbitration and Conciliation Act, 1996 is the parties' clear intention to arbitrate. By shutting the door on technical objections based solely on missing signatures, the ruling enhances certainty and reliability in commercial dealings. It also aligns India with global arbitration standards, where party autonomy and genuine consent outweigh rigid formalities. In affirming that arbitration is driven by intent rather than paperwork, the Supreme Court has reinforced confidence in the process as a fair, efficient, and business-friendly mode of dispute resolution.

Conclusion

The Supreme Court's ruling provides a definitive answer on the enforceability of unsigned arbitration agreements, affirming that the absence of a signature cannot invalidate an agreement where mutual consent is clearly established. By prioritizing substance over form, the judgment reinforces arbitration as a credible, efficient, and business-friendly mode of dispute resolution in India. It closes the door on technical objections designed to frustrate proceedings and places Indian jurisprudence firmly in line with global standards that value party autonomy and genuine consent. At a time when commercial certainty is crucial for both domestic and international transactions, this decision offers clarity, predictability, and renewed confidence in India's pro-arbitration framework.

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[1] 2025 INSC 1036.

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