



ARBITRATION AND CONCILIATION

Arbitration Cannot Be Founded on Unilateral Acknowledgement: Delhi High Court Reaffirms Consent as the Basis of Arbitral Jurisdiction

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Introduction

The Delhi High Court in *Matsya Fincap Pvt. Ltd. v. Govind Lal* has delivered an important ruling on the foundational requirement of a **valid arbitration agreement** under *Section 7 of the Arbitration and Conciliation Act, 1996*. The judgment is particularly significant for finance companies, lenders and commercial entities that often rely upon acknowledgement letters, undertakings or informal written confirmations for initiating recovery proceedings through arbitration.

The Court held that an acknowledgement letter containing an arbitration clause, but signed only by one party and unsupported by any contemporaneous material showing mutual assent, cannot constitute a valid arbitration agreement. Consequently, an ex-parte arbitral award passed on the basis of such a document was held to be a nullity and incapable of execution.

The judgment is important not merely because it refused enforcement of the award, but because it carefully examined the **jurisdictional foundation of arbitration** and reiterated that consent is the very source of arbitral authority.

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Factual Background

The appellant, Matsya Fincap Pvt. Ltd., had filed execution proceedings seeking enforcement of an **ex-parte arbitral award** dated 22 October 2022. The award had been passed by a sole arbitrator and directed the respondent, Govind Lal, to pay a sum of Rs. 10,00,000 along with interest.

The appellant's case was founded upon a receipt-cum-acknowledgement dated 16 September 2020. The acknowledgement letter allegedly recorded that the respondent had taken responsibility for loans availed by several borrowers from the appellant. It further stated that a cheque for Rs. 10,00,000 had been issued in favour of the appellant towards repayment.

The document also contained an **arbitration clause** providing that all disputes relating to the transaction would be resolved by a sole arbitrator, namely Sh. Manohar Lal Saini, Advocate, and that the arbitration proceedings would take place at Alwar, Rajasthan.

However, the critical factual aspect was that the acknowledgement letter was admittedly signed only by the respondent and not by the appellant. Despite this, the sole arbitrator proceeded on the basis that the acknowledgement letter bore the signatures of the parties and passed an ex-parte award in favour of the appellant.

When the award was sought to be executed, the respondent objected to its enforceability on the ground that there was no valid arbitration agreement and, therefore, the arbitrator lacked jurisdiction. The learned District Judge accepted this objection and refused to enforce the award. The appellant challenged that order before the Delhi High Court.

Issues Before the Court

1. Whether an acknowledgement letter containing an arbitration clause, but **signed only by one party**, could amount to a valid arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996.
2. Whether the executing court was justified in examining this issue at the execution stage under Section 47 of the Code of Civil Procedure, 1908, or whether the respondent ought to have challenged the award only under Section 34 of the Arbitration Act.

Judgment and Reasoning of the High Court

Requirements Under Section 7

The High Court began its analysis by examining *Section 7 of the Arbitration and Conciliation Act*. The Court observed that arbitration is based on consent, and the existence of a valid arbitration agreement is the foundation of arbitral jurisdiction. Section 7 requires not only that the agreement must be in writing, but also that there must be **consensus ad idem** between the parties to submit their disputes to arbitration.

The Court identified two indispensable requirements for a valid arbitration agreement:

- There must be a **meeting of minds** between the parties to refer disputes to arbitration.
- Such consensus must be **evidenced in writing** in one of the modes contemplated under Section 7(4) of the Act.

These modes include:

- A document signed by the parties.
- An exchange of letters or electronic communications.
- An exchange of statements of claim and defence where the existence of the arbitration agreement is alleged and not denied.
- A written contract incorporating an arbitration clause by reference.

Application to the Acknowledgement Letter

Applying this test, the Court found that the acknowledgement letter did not satisfy **Section 7(4)(a)**, since it was not signed by both parties. The appellant attempted to rely on Section 7(4)(b) by arguing that the arbitration agreement could be inferred from exchange of communications.

However, the Court found that no letters, emails, electronic correspondence or other material had been produced to show that the appellant and respondent had mutually agreed to arbitrate. Therefore, the Court held that the requirement of **mutual assent** was not satisfied.

The Court made an important distinction between a document merely containing an arbitration clause and a valid arbitration agreement. The mere presence of an arbitration clause in a document is not sufficient. The document must either be signed by both parties or be supported by other material showing that both parties agreed to be bound by the arbitration clause. In the absence of such material, arbitration cannot be invoked merely on the unilateral assertion of one party.

Acknowledgement Letter Not Treated as an Enforceable Contract

The Court further examined whether the acknowledgement letter could itself be treated as a **concluded and enforceable contract**. It observed that a binding contract must contain the following essential elements:

- Offer
- Acceptance
- Lawful consideration
- Intention to create legal relations
- Consensus ad idem

The Court clarified that a contract need not necessarily be signed by both parties in every case. However, where a document is not signed by one party, there must be **clear and cogent evidence** showing that such party accepted the terms contained in the document. This acceptance may be established through correspondence, conduct or other contemporaneous material.

In the present case, no such evidence existed. The acknowledgement letter was relied upon not merely as a limited acknowledgement of liability, but as the very foundation of the contractual relationship, the alleged guarantee obligation and the arbitration clause.

There was no independent loan agreement or guarantee agreement executed by the respondent in favour of the appellant in respect of the loans allegedly advanced to the listed borrowers. In these circumstances, the Court held that the acknowledgement letter remained, at best, a **unilateral record** and could not be elevated to the status of a concluded bilateral contract.

Erroneous Assumption by the Arbitrator

A crucial factor in the Court's reasoning was that the sole arbitrator had proceeded on an **incorrect factual premise**. The award recorded that the acknowledgement letter bore the signatures of the parties. This was contrary to the admitted position that the appellant had not signed the document.

The Court held that where the arbitrator's jurisdiction is founded upon an erroneous assumption regarding the existence of a valid arbitration agreement, the award cannot be sustained. In arbitration, jurisdiction flows from consent. If consent is absent or not proved in the manner required by law, the arbitral tribunal lacks **inherent jurisdiction**.

Such a defect is not a mere procedural irregularity; it strikes at the root of the award.

Executing Court's Power to Refuse Enforcement

The appellant argued that the respondent ought to have challenged the award under Section 34 of the Arbitration Act and could not resist enforcement at the execution stage. The High Court rejected this contention.

The Court accepted that the scope of inquiry under **Section 47 CPC** is narrow and that an executing court cannot ordinarily go behind the decree or award. However, it held that where the award is a nullity due to inherent lack of jurisdiction, the executing court is not powerless.

The Court relied on the principle laid down in *Dhurandhar Prasad Singh v. Jai Prakash University*, where the Supreme Court held that a decree which is **void ab initio** or passed without jurisdiction can be questioned at the execution stage.

On this basis, the High Court held that the executing court had not reappreciated the merits of the dispute. It had only examined whether the arbitrator possessed jurisdiction in the first place. Since the existence of a valid arbitration agreement is the foundation of arbitral jurisdiction, the executing court was justified in refusing enforcement.

Concerns on Unilateral Appointment and Neutrality

The High Court also expressed concern regarding the manner in which the arbitral tribunal was constituted. The arbitration clause named a specific individual as the sole arbitrator. The record further indicated that the same arbitrator had been appointed by the appellant in several similar proceedings involving multiple alleged borrowers.

The Court observed that naming an arbitrator in an agreement is not impermissible by itself. However, such naming must flow from a **valid and mutually accepted arbitration agreement**. Where the very document containing the arbitration clause is not shown to be mutually accepted, the appointment of the named arbitrator effectively becomes a unilateral constitution of the tribunal.

The Court emphasised that arbitral proceedings must be fair, impartial and independent. **Party autonomy** cannot be stretched to permit one party to dominate the constitution of the arbitral tribunal.

The Court also noted that unilateral appointment arrangements are impermissible unless validated by an express written waiver after disputes have arisen. Mere participation or acquiescence cannot amount to waiver under **Section 12(5)** of the Arbitration Act.

Conclusion

The Delhi High Court ultimately upheld the order of the executing court and dismissed the appeal. It held that the absence of a valid arbitration agreement rendered the ex-parte award a **nullity** and incapable of execution.

The judgment is a strong reminder that arbitration cannot be initiated on the basis of unilateral documentation. A party seeking to rely on arbitration must establish clear mutual consent, supported either by signatures or by contemporaneous written communications evidencing acceptance. The decision also cautions lenders and commercial entities against relying on loosely drafted acknowledgements or informal documents as the basis for arbitral proceedings.

Key Takeaways for Contracting and Dispute Resolution Teams

1. **Arbitration clauses** must be contained in properly executed documents or supported by clear written acceptance.
2. **Appointment mechanisms** must be fair, neutral and mutually agreed.
3. An award passed without a valid arbitration agreement is not merely vulnerable under Section 34; it may be treated as a **nullity even at the execution stage**.

This judgment therefore strengthens the principle that arbitration derives its legitimacy from consent, mutuality and fairness. Without these elements, an arbitral award cannot be enforced merely because it has been passed by an arbitrator.

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