



Impartiality Imperative: Self-Resolution Clauses Do Not Constitute Arbitration Agreements



Introduction

Arbitration serves as a cornerstone of modern commercial practice, offering a private and efficient alternative to traditional litigation. At its heart lies the arbitration agreement, a contractual commitment by parties to resolve their disputes through this mechanism. The interpretation of such agreements is frequently tested, particularly concerning the essential elements that constitute a valid reference to arbitration. The core question revolves around discerning the parties' true intention to opt for binding arbitration.

On this very principle, the Calcutta High Court recently in *Balasore Alloys Limited vs. Flynt Mining LLP* held that merely including a dispute resolution mechanism that empowers the contract signatories to resolve disputes does not, by itself, imply an intention to arbitrate. The court's decision centered on the fact that such a clause essentially establishes an internal, in-house process, rather than a commitment to a neutral and impartial arbitral process. This consequential ruling warrants a more in-depth analysis, and this article will delve into the nuances of the judgment and its implications.

Background of the Case



The Calcutta High Court, in a recent case, was tasked with determining the validity of a purported arbitration agreement embedded within a broader contractual dispute resolution clause. The court's inquiry focused on a fundamental question: When does a dispute resolution mechanism, which empowers the contract's signatories to resolve disputes, transform into a binding arbitration agreement?

The case involved a contract containing a clause that outlined a process for resolving disagreements. Initially, the parties were to engage in mutual discussions to reach an amicable settlement. If those discussions failed, the dispute was to be referred to a "tribunal" comprising the Managing Director of one party and the designated partner of the other. This tribunal was tasked with resolving the dispute.

Arguments of the Parties

The petitioner, seeking to invoke arbitration, argued that this clause, despite not explicitly using the term "arbitration," constituted a valid arbitration agreement. They anchored their argument in the assertion that the essence of an arbitration agreement lies in the parties' intention to refer their disputes to a private tribunal for a binding decision. To bolster this claim, the petitioner drew an analogy to practices prevalent in railway contracts and Public Sector Undertaking (PSU) agreements. In these contexts, it's not uncommon for company officers to serve as arbitrators.

The petitioner contended that the designation of the individuals involved, rather than their specific names, was sufficient to establish the parties' intent to arbitrate. They argued that the absence of the word "arbitration" should not be a deal-breaker, provided the intention to arbitrate is evident from the terms of the clause.

In making their case, the petitioner placed significant reliance on two landmark Supreme Court of India decisions. The first, *Jagdish Chander vs. Ramesh Chander and ors.*, (2007), a ruling that emphasized that the absence of the word "arbitration" is not fatal to an arbitration agreement, if the other elements of arbitration are present. The second, *State of Punjab and ors. vs. Dina Nath*, (2007), further supported this position, holding that a clause can be interpreted as an arbitration clause even without the term "arbitration", if the parties intended their decision to be final and binding.

However, the respondent vehemently opposed this interpretation. They argued that the clause in question fell short of meeting the mandatory requirements of an arbitration agreement as defined by the Arbitration and Conciliation Act, 1996. The respondent's





counsel argued forcefully that the mechanism described in the clause lacked the crucial attributes of impartiality and independence – qualities that are indispensable to a valid arbitration process.

The respondent contended that empowering the very individuals who signed the contract, and who were therefore intimately involved in its execution and potential disputes, to act as the “tribunal” would fatally compromise the fairness and objectivity of the dispute resolution process.

Court’s Decision and Rationale

The Calcutta High Court, in its meticulous deliberation, sided with the respondent. It firmly emphasized that while the explicit use of the term “arbitration” is not always mandatory, a valid arbitration agreement must, without ambiguity, demonstrate the parties’ intention to submit their disputes to an impartial and independent adjudicatory process.

To arrive at its decision, the court embarked on a detailed analysis of the principles established in the **Jagdish Chander case**. The court underscored the necessity of a “private tribunal” that is empowered to adjudicate disputes in an impartial manner, affording both parties a fair hearing, and rendering a decision that is binding on them. The court carefully weighed whether the dispute resolution mechanism in the case at hand met these criteria.

The court’s reasoning was also deeply rooted in the principles of natural justice, a fundamental legal doctrine that mandates fairness and impartiality in all decision-making processes, particularly those that have a quasi-judicial character. The court astutely observed that the clause in question empowered the very individuals who had signed the contract, and who were therefore intrinsically linked to its execution and the disputes that might arise from it, to serve as the adjudicators.

This, the court reasoned, raised profound concerns about their capacity to render an impartial and unbiased decision. As the court eloquently stated, “Under such circumstances, this Tribunal cannot be construed to be an impartial private tribunal...” The court essentially found that the dispute resolution mechanism failed to create a necessary buffer between the contractual parties and the adjudicators of their disputes.

Furthermore, the court took into account the implications of **Sections 10 and 12(5) of the Arbitration and Conciliation Act, 1996**, particularly as amended in 2015. These provisions explicitly reinforce the imperative of arbitrator impartiality and independence, establishing legal barriers against individuals with a direct interest or involvement in the contract from serving as arbitrators. The court observed that these provisions would render the Managing





Director and designated partner ineligible to act as arbitrators, given their direct involvement in the contract.

Conclusion

The Calcutta High Court's ruling reinforces a fundamental principle of arbitration: the necessity of an impartial and independent adjudicatory process. By rejecting the notion that a self-resolution mechanism among contract signatories equates to a valid arbitration agreement, the court has upheld the integrity of arbitration as a dispute resolution mechanism. This decision serves as a crucial reminder to drafters of commercial agreements to clearly delineate their intention to arbitrate and to ensure the mechanism they establish adheres to the principles of natural justice and the statutory requirements of the Arbitration and Conciliation Act, 1996.

Looking ahead, this judgment may have significant implications for how dispute resolution clauses are interpreted, particularly in contracts where parties seek to incorporate internal dispute resolution processes. It also highlights a potential area of increased scrutiny in the enforcement of arbitral awards, especially where the impartiality of the arbitral tribunal is called into question. A key question that may arise in the future is: To what extent can parties contractually modify or waive the requirements of arbitrator impartiality and independence, given the mandatory nature of **Sections 10 and 12(5) of the Arbitration and Conciliation Act, 1996?**

1. AP-COM/896/2024
2. (2007) 5 SCC 719
3. (2007) 5 SCC 28

