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Supreme Court clarifies that enabling clauses do not constitute binding arbitration agreements

A 2 (two) judge bench of the Hon'ble Supreme Court of India ("**Supreme Court**") in the case of ***BGM and M-RPL-JMCT (JV) vs. Eastern Coalfields Limited***[1] held that a contract clause stating disputes 'may be' referred to arbitration, is not a binding arbitration agreement under Sections 7 and 11[2] of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The Supreme Court ruled that only clauses with clear and mandatory language explicitly requiring disputes to be resolved by arbitration are enforceable and that the enabling or optional language is insufficient to constitute an arbitration agreement.

Brief facts

1. The appellant entered into a contract with Eastern Coalfields Limited ("**ECL**") for transportation and handling of goods. The appellant sought appointment of an arbitrator under Section 11(6) of the Arbitration Act, relying on Clause 13 of the General Terms and Conditions ("**GTC**") appended to the e-tender notice.
2. Clause 13, titled 'Settlement of Disputes' provided a multi-tiered mechanism for resolving disputes. It stated that disputes should first be settled at the company level, and if differences persisted, they would be referred to a committee constituted by the owner. The clause further stated that in case of parties other than government agencies, "*the redressal of the dispute may be sought through Arbitration and Conciliation Act, 1996 as amended by Amendment Act of 2015*".
3. The Hon'ble Calcutta High Court dismissed the application under Section 11 of the Arbitration Act, holding that Clause 13 of the GTC did not constitute an arbitration agreement. The appellant challenged this decision before the Supreme Court.

Issues

The main issues for consideration before the Supreme Court were as follows:

1. whether the question of existence of an arbitration agreement should be left for the arbitral tribunal to decide under the doctrine of competence-competence?
2. whether Clause 13 of the GTC constitutes an arbitration agreement as contemplated under Section 7 of the Arbitration Act?

[1] 2025 SCC OnLine SC 1471 (decided on July 18, 2025)
[2] Section 7 defines what constitutes an 'arbitration agreement' and Section 11 discusses appointment of arbitrators.

Analysis and findings

Issue 1: Scope of referral court's power under Section 11 of the Arbitration Act

The Supreme Court examined the scope of judicial review under Section 11 of the Arbitration Act. Referring to the decision of the constitution bench in *Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899, In re*[3], the Supreme Court reiterated that the referral court's jurisdiction under Section 11 of the Arbitration Actis confined to the examination of the existence of an arbitration agreement.

The Supreme Court observed the following:

"*The purport of using the word "examination"* [as used in Section 11(6A)[4]] *connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. However, the expression "examination" does not connote or imply a laborious or contested inquiry*".

The Supreme Court clarified that where the arbitration agreement is found in an undisputed document, no trial or inquiry is required. In the present case, the appellant relied solely on Clause 13 of the GTC, which was undisputed. Therefore, the Supreme Court held that it was within the referral court's jurisdiction to examine the clause and determine whether it constituted an arbitration agreement.

Issue 2: Whether Clause 13 of the GTC constitutes an arbitration agreement

The Supreme Court then turned to the main issue, whether Clause 13 of the GTC constituted an arbitration agreement.

The Supreme Court examined Clause 13 of the GTC mainly in light of its earlier decisions in *Jagdish Chander v. Ramesh Chander*[5], and *Mahanadi Coalfields Ltd. vs. IVRCL AMR Joint Venture*[6].

Sr. No.	Case Name	Dispute resolution clause in that case	Supreme Court's finding
1.	*Jagdish Chander vs. Ramesh Chander*	*"If during the continuance of the partnership or at any time afterwards any dispute touching the partnership arises between the partners, the same shall be mutually decided by the partners or shall be referred for arbitration if the parties so determine."*	The Supreme Court held that such language required further consent and did not reflect *consensus ad idem*.
2.	*Mahanadi Coalfields Ltd. vs. IVRCL AMR Joint Venture*	15. "*Settlement of Disputes/Arbitration…..* *15.2 In case of parties other than Govt. Agencies, the redressal of the disputes may be sought in the Court of Law."*	The Supreme Court held that Clause 15 though titled "Settlement of Disputes/Arbitration", the substantive part of it makes it abundantly clear that there is no arbitration agreement between the parties to refer either present or future dispute to arbitration.

Relying on the said decisions, the Supreme Court in the present case held that Clause 13 of the GTC did not constitute an arbitration agreement under Section 7 of the Arbitration Act.

[3] (2024) 6 SCC 1
[4] The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6) of the Arbitration Act, will, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement.
[5] (2007) 5 SCC 719
[6] (2022) 20 SCC 636

The Supreme Court noted that the use of the word 'may be sought' implied that the clause was merely enabling and did not reflect a binding commitment to arbitrate. It observed:

"*Use of the words 'may be sought', imply that there is no subsisting agreement between parties that they, or any one of them, would have to seek settlement of dispute(s) through arbitration. It is just an enabling clause whereunder, if parties agree, they could resolve their dispute(s) through arbitration.*"

Conclusion

This judgment reinforces the principle that arbitration must be based on a clear and binding agreement. Clauses that merely permit arbitration as an option, without mandating it, do not satisfy the requirements under Section 7 of the Arbitration Act.

For contracting parties, the judgment underscores the importance of precise drafting in dispute resolution clauses. The use of permissive language can render the clause unenforceable as an arbitration agreement. Parties intending to resolve disputes through arbitration must ensure that the clause reflects a binding obligation to arbitrate.

The party seeking to rely on an arbitration agreement bears the burden to demonstrate, at least *prima facie*, the existence of a binding agreement to arbitrate.

By applying and reiterating the principles established in previous decisions, the Hon'ble Supreme Court has reinforced commercial certainty and contractual discipline that arbitration must be a product of clear intent, recorded in writing, binding on both sides from the outset, and not left to future negotiation or discretion. Where parties do intend disputes to be resolved by arbitration, the clause must use mandatory language such as *"shall be referred to arbitration"*, thereby, removing any room for doubt.

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