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Supreme Court of India holds that mere non-signing by one party does not invalidate arbitration agreement

The Hon'ble Supreme Court of India ("**Supreme Court**"), in *Glencore International AG vs. M/s. Shree Ganesh Metals and Anr.*¹, set aside the order passed by the Delhi High Court ("**Delhi HC**") wherein the Delhi HC ruled that an arbitration agreement, not signed by both the parties, will not be enforceable. The Supreme Court held that mere non-signing of the arbitration agreement would not invalidate the arbitration agreement if the parties' conduct demonstrated acceptance and performance in accordance with the agreement.

Brief facts

Between 2011 and 2012, Shree Ganesh Metals ("**Respondent No.1/SGM**"), an Indian proprietorship, purchased zinc metals under 4 (four) contracts dated April 20, 2011, July 1, 2011, November 23, 2011, and January 11, 2012 from Glencore International AG ("**Appellant/Glencore**"), a Swiss company. Each contract stipulated arbitration with the seat of arbitration being in London.

A fifth contract for the supply of 6,000 (six thousand) MT of zinc metal between March 2016 and February 2017 was negotiated between the parties via emails. In pursuance to the negotiations, Glencore drafted and signed the contract dated March 11, 2016 ("**Contract**") and forwarded it to SGM for its signatures. The Contract also contained an arbitration clause.

Although SGM did not sign the Contract, it performed its obligations by providing 2 (two) separate letters of credit under the Contract, in favour of Glencore. Further, Glencore also performed its obligations by supplying 2,000 (two thousand) MT of zinc metal to SGM under the Contract.

Subsequently, on account of non-payment by SGM, Glencore encashed the letters of credit issued by SGM. Upon SGM filing a civil suit before the Delhi HC regarding the encashment of letters of credit, Glencore approached the Delhi HC under Section 45 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), seeking referral of disputes to arbitration.

The Delhi HC, by its order dated November 2, 2017, held that the Contract was not signed by SGM and hence, remained inconclusive. The said view was upheld by the Division Bench in its judgment dated November 14, 2019. Aggrieved thereby, Glencore filed the present appeal.

¹ Civil Appeal No. 11067 of 2025 (Special Leave Petition (C) No. 27985 of 2019) (decided on August 25, 2025)

Issue

Is there a binding arbitration agreement between Glencore and SGM?

Analysis And findings

The Supreme Court, while disagreeing with the Delhi HC, observed that the conduct of the parties *vis-à-vis* acceptance of delivery, issuance of letters of credit and repeated reference to the Contract during their communications, clearly demonstrated that the parties duly accepted and acted upon the Contract.

The Supreme Court reiterated the legal proposition that an arbitration agreement can be inferred even from an exchange of letters, including communication through electronic means. The mere fact that the Contract was not signed, would not obviate from this principle. Section 7(3) of the Arbitration Act reiterates that the only pre-requisite is that the agreement should be in writing. However, this does not mean that in all cases that the arbitration agreement needs to be signed.

Even otherwise, the Supreme Court, while referring to the jurisdiction under Section 45 of the Arbitration Act, observed that in view of the doctrine of 'Kompetenz-Kompetenz', only the prima facie proof of existence of an arbitration agreement needs to be adduced before the referral court.

In addition, the Supreme Court reiterated that a commercial document having an arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than to invalidate it.

Therefore, in view of the unequivocal demonstration that SGM had accepted and acted upon the Contract, the Supreme Court held the arbitration agreement to be binding on the parties.

Conclusion

The judgment upholds the principle of party autonomy in its true sense, disallowing parties to bypass a consensual arbitration agreement on a mere technicality. The terms of the commercial agreement have been given effect through the conduct of the parties, rather than being invalidated on account of its mere non-signing. The judgment also reiterates the principle of limited scrutiny permitted under Section 45 of the Arbitration Act.

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