

## News

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**Even if the contract is not signed, the arbitration clause would still be enforceable if the parties had followed its terms: The Supreme Court**



The Court decided that even in cases where the parties had not signed the contract, elements like the provision of goods and credit letters were sufficient to uphold arbitration.

In the recent case of Glencore International AG vs. Shree Ganesh Metals & Anr., the Supreme Court ruled that parties might still be bound by an unwritten contract with an arbitration clause provided they had agreed and acted upon its contents.

Refusing to submit such conflicts to arbitration would be "**unsustainable**," according to a bench of Justices Sanjay Kumar and Satish Chandra Sharma.

It overturned Delhi High Court rulings that the parties had not entered into an arbitration agreement.

The Supreme Court observed that the respondent had fulfilled important responsibilities under the 2016 contract, such as providing letters of credit and removing a portion of the contractual items, proving that the contract and its arbitration clause were accepted.

It emphasized that where a party's own actions demonstrated unambiguous consent, it could not subsequently use the lack of its signature to avoid duties.

When the parties' actions in furtherance of the contract clearly demonstrated acceptance of the terms and conditions included therein, including the arbitration agreement, the bench observed that the respondent's failure to sign the contract would not negate this principle.

A sequence of zinc supply agreements between an Indian metal maker (Shree Ganesh Metals) and a Swiss commodity trading corporation (Glencore International) gave rise to the dispute.

There were arbitration clauses in earlier contracts from 2011 and 2012 that directed disputes to the London Court of International Arbitration. The parties concluded a new contract for the supply of 6,000 metric tons of zinc in March 2016. After exchanging emails to finalize the agreements, the Indian company proposed a change to the price formula, which the seller agreed to.

The seller then proceeded to furnish 2,000 metric tonnes of zinc under the terms of a legal contract that reflected the updated terms.

The buyer's bank opened standby letters of credit specifically mentioning the 2016 contract, and invoices raised under this contract were honored. The buyer made reference to this exact contract in later correspondences as well, promising to fulfill their end of the bargain.

The Indian company launched a civil complaint in Delhi to declare the invocation of the letters of credit invalid when disagreements emerged over additional supply and pricing.

Invoking the arbitration clause, the seller requested that the dispute be referred to arbitration in accordance with Section 45 of the 1996 Arbitration and Conciliation Act.

The Delhi High Court's sole judge dismissed the application, ruling that since the buyer had not signed the contract, it had not been completed.

This opinion was later supported by a Division Bench of the High Court, which concluded that the parties were not ad idem on arbitration.

### **The Supreme Court heard the appeal as a result.**

The Supreme Court held a different opinion from the High Court.

It made reference to the emails, invoices, letters of credit, and communications that all attested to the full execution of the 2016 contract.

It emphasized that, according to the law, an arbitration agreement merely had to be in writing and that, if approval could be deduced from behavior, signatures were not required.

The Bench reiterated that commercial contracts with arbitration clauses must be interpreted in a way that gives effect to the parties' intention rather than invalidating it, citing previous decisions such as *Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia Pvt. Ltd.* and *Caravel Shipping Services Pvt. Ltd. v. Premier Sea Foods Exim Pvt. Ltd.*

"The parties' intention must be considered when interpreting an arbitration agreement... The Court noted that the simple fact that one party did not sign the agreement does not release it from liability under it if it can be demonstrated that the parties are at ad idem.

As a result, it granted the appeal, reinstated the seller's request for arbitration, and instructed the referral court to act appropriately.

Senior Advocate **Gourab** Banerji, together with attorneys Sumeet **Lall**, **Sidhant** Kapoor, and **Palakk** Rawat, represented the appellants.

Senior Advocate Vinay Garg, together with attorneys Piyush Sharma, **Karunesh** Tandon, Aditya Dikshit, and **Sonal** Jain, represented the respondents