



## Delhi High Court invalidates arbitration clause on the ground that it cannot permit only one party to arbitrate<sup>1</sup>

### Brief Facts

Shri Chand Construction and Apartments Private Limited (“**Plaintiff**”), the debtor, filed a civil suit against Tata Capital Housing Finance Limited (“**Defendant**”), the creditor, for loss caused on account of failure to return the title deeds of an immovable property deposited with the Defendant as security.

On account of the delay in filing of the written statement / application under Section 8 of the Arbitration and Conciliation Act, 1996 (“**Act**”), the Defendant’s right to file the written statement was closed by the High Court of Delhi (“**Court**”) by its order dated 21 August 2019. The Defendant filed an appeal against this order to the Division Bench wherein the Defendant was permitted to file its written statement. In the meanwhile, the Defendant also filed an application under Section 8 of the Act (“**Application**”) requesting the Court to refer the parties to arbitration. The arbitration clause in the parties’ agreement provided that if by virtue of a government notification/amendment/change in law, the Defendant comes under the purview of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (“**SARFAESI Act**”) or the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (“**DRT Act**”), the arbitration clause shall cease to have effect at the option of the Defendant. It was an admitted position that the Defendant was covered by the provisions of the SARFAESI Act.

### Issues

**Issue (i):** Whether the Defendant, by filing an appeal against the order closing its right to file a written statement, cannot be permitted to resort to Section 8 of the Act?

**Issue (ii):** Whether an arbitration clause that permits only one of the parties to the agreement to resort to the remedy of arbitration is valid?

### Judgment

**Issue (i):** The Court held that filing an appeal does not indicate the Defendant’s intention/election to continue/proceed with the civil suit instead of arbitration. The Court relied on the following:

- (i) While the erstwhile Section 34 of the Arbitration and Conciliation Act, 1940 used the terminology “at any time before filing a written statement or taking any other steps in the proceedings”, the words “or taking any other steps in the proceedings” in the 1996 Act have been done away with; and
- (ii) The decision by the Supreme Court in **Greaves Cotton Ltd. v. United Machinery and Appliances**,<sup>2</sup> wherein it was held that an application for seeking extension of time for filing a written statement would not constitute the “first statement on the substance of the issue” as it did not reply to the allegation in the plaint.

### In this Issue

Brief Facts

Issues

Judgment

Analysis





# Arbitration Case Insights

In light of the above, the Court held that the Defendant's Application satisfied the test laid down in Section 8 of the Act.

**Issue (ii):** The Court held that the arbitration clause was invalid in light of Section 7 of the Act. The Defendant argued that by virtue of the Defendant being covered by the provisions of the SARFAESI Act, the arbitration clause would cease to have effect only as far as the claim of the Defendant against the Plaintiff is concerned but will continue to have effect as far as the claims of the Plaintiff against the Defendant are concerned. The Court rejected the argument by placing reliance on Section 7 of the Act. The Court held that the words "all or certain disputes" under Section 7 permit classification of disputes and not classification of claims. The Court further held that the said words do not allow parties to differentiate between claims, i.e. with respect to a legal relationship between the parties, they do not allow only one party to espouse claims through arbitration leaving the other party to resort to some other mode of dispute resolution. Further, the Court held that while adjudicating an application under Section 8, it is also entitled to adjudicate upon the validity of the arbitration agreement.

## Analysis

In this decision, the Court clarified that an application under Section 8 can be filed at any time before the filing of a written statement. It further observed that extending the time limit for filing a written statement would automatically extend the time for filing an application under Section 8. The decision also clarifies the scope of judicial scrutiny while adjudicating applications under Section 8.

Further, the Court has laid down a new interpretation/jurisprudence with respect to Section 7 of the Act. The Court's interpretation that Section 7 only allows classification of disputes and not classification of claims is certainly innovative. Such an interpretation would avoid multiplicity of proceedings where one party chooses to initiate arbitration, while the other party is compelled to resort to another mode of dispute resolution in respect of the same legal relationship.

1 Authored by Aashish Gupta, Partner and Amogh Srivastava, Associate; *Shri Chand Construction and Apartments Private Limited & Anr. v. Tata Capital Housing Finance Limited*, C.S.(OS) 179 of 2019, Delhi High Court, 2020 SCC OnLine Del 472, judgment dated 4 March 2020.

**Quorum:** Rajiv Sahai Endlaw, J.

2 (2017) 2 SCC 268.

## In this Issue

Brief Facts

Issues

Judgment

Analysis

## PRACTICE AREA EXPERTS

### Pallavi Shroff

Managing Partner and  
National Practice Head Dispute Resolution  
+91 98100 99911  
E: pallavi.shroff@AMSShardul.com

### Tejas Karia

Partner and Head, Arbitration Practice sub-group  
+91 98107 98570  
E: tejas.karia@AMSShardul.com

### Anirudh Das

Partner  
+91 98100 98329  
E: anirudh.das@AMSShardul.com

### Rishab Gupta

Partner  
+91 98217 80313  
E: rishab.gupta@AMSShardul.com

### Siddhartha Datta

Partner  
+91 90070 68488  
E: siddhartha.datta@AMSShardul.com

### Ila Kapoor

Partner  
+91 98717 92737  
E: ila.kapoor@AMSShardul.com

### Binsy Susan

Partner  
+91 96500 80397  
E: binsy.susan@AMSShardul.com

### Aashish Gupta

Partner  
+91 98189 19857  
E: aashish.gupta@AMSShardul.com

### Smarika Singh

Partner  
+91 97170 98075  
E: smarika.singh@AMSShardul.com

### Disclaimer

This is intended for general information purposes only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.