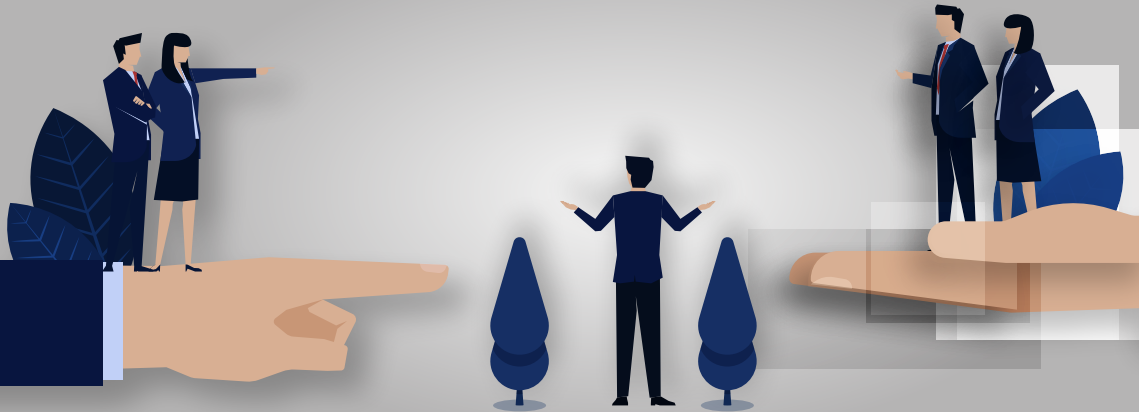


October 2021



High Court of Delhi upholds tiered dispute resolution clauses to be mandatory and enforceable¹

Brief Facts

On submission of tender invited by Steel Authority of India Limited (“**Respondent**”), M/s Sanjay Iron and Steel Ltd. (“**Petitioner**”) and the Respondent entered into an agreement to operate as a distributor of Thermo Mechanically Treated steel (“**TMT**”) in the State of Haryana (“**Agreement**”). During the course of execution of the Agreement, disputes arose between the Petitioner and the Respondent (“**Parties**”) concerning certain orders from small customers and dealers below 50 tonnes of TMT, owing to which the Respondent issued a termination notice to the Petitioner.

Following the termination, the Petitioner invoked the dispute resolution clause of the Agreement (“**Impugned Clause**”), which was a tiered dispute resolution clause, stipulating that the Parties must first attempt to conciliate and then resort to arbitration. It is provided, in relevant part, as follows:

“10.0 Resolution of Disputes. Conciliations and Arbitrations:

RESOLUTION OF DISPUTES

In the event of any dispute/difference whatsoever arising between the parties relating to or arising out of the tender, the parties shall endeavour to resolve such dispute through the SCOPE Forum of Conciliation & Arbitration (SFCA) New Delhi (as amended from time to time).

10.1 Conciliation

Any dispute or difference whatsoever arising between the parties relating to or arising out of contract, may be settled by the Rules of conciliation in accordance with the Rules of SCOPE Forum of Conciliation & Arbitration (SFCA) and the settlement so rendered between the parties in pursuance thereof shall be final and binding on the parties. If the dispute is not settled by conciliation within 30 days of the initiation of conciliation or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by Arbitration, in accordance with the Rules of Arbitration of SCOPE Forum of Conciliation and Arbitration.

In this Issue

Brief Facts

Issue

Judgment

Analysis





10.2 Arbitration

In the event the dispute/ difference is not resolved through conciliation as per the above provisions, the aggrieved party may refer the dispute to Arbitration under the SCOPE Forum of Conciliation & Arbitration (SFCA) "New Delhi. Any dispute or difference whatsoever arising between the parties relating to construction, interpretation, application, meaning, scope, operation or effect of this contract or the validity or the breach thereof: shall be settled by arbitration in accordance with the Rules of Arbitration of the "SCOPE" Forum and the award made in pursuance thereof shall be final and binding on the parties."

Post invocation of the Impugned Clause, the Petitioner realised that the conciliation process required submission of fee, which it refused to pay for being exorbitant. Instead of conciliating, the Petitioner invoked sub-clause 2 of the Impugned Clause and preferred a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**Act**") for the appointment of Sole Arbitrator ("**Petition**") before the High Court of Delhi ("**Court**").

The Respondent objected to the Petition on the grounds that: (i) it violated Section 11(2) of the Act which affirms party autonomy; (ii) it violated Section 76 read with Section 79(3) of the Act that mandates termination of conciliation proceedings in the absence of payment of fees of conciliator; and (iii) it is not maintainable since the Petitioner had not exhausted its remedy before the required institution.

Issue

Whether the prayer of the Petitioner seeking appointment of Arbitrator under Section 11 of the Act is maintainable in view of the Impugned Clause?

Judgment

Opining that the very purpose of a conciliation clause in any agreement is to shorten the path for settlement of disputes, the Court dismissed the Petition and upheld mandatory compliance of the Impugned Clause. The Parties were directed to first explore the possibility of resolution of disputes through conciliation, regardless of the fees payable by the Parties as the Impugned Clause stated so in mandatory terms.

The Court differentiated the present case on facts, from the Hon'ble Supreme Court's judgments, *Visa International Limited v. Continental Resources (USA) Limited*² and *Demerara Distilleries Private Limited v. Demerara Distillers Limited*³, as there were sufficient correspondences between the parties in the aforementioned judgments, thereby showcasing no scope of conciliation.

To the contrary, in the present case, the Court remarked that the Parties had no such correspondences. The Court opined that despite invoking conciliation, the Parties had made no attempt to conciliate. In light of the same, the Court directed the Parties to exhaust the scope of conciliation within 30 days of initiation of conciliation proceedings, as stipulated in sub-clause 1 of the Impugned Clause and thereafter, if required, the Parties shall resort to arbitration.





Analysis

The Impugned Clause was a tiered dispute resolution clause defining pre-conditions or pre-arbitral obligations of the Parties. While such tiered dispute resolution clauses are recurrent in most contracts in India, their legal nature remains uncertain owing to conflicting judicial pronouncements.

The present case is distinct from this Court's previous decision, **Ravindra Kumar Verma v. M/S. BPTP Ltd.**⁴ wherein this Court upheld the tiered dispute resolution clause to be "only directory and not mandatory".

In the present case, the Court took a reasonable approach by interpreting the dispute resolution clause strictly, giving effect to its language, while also clarifying that the conciliation procedure may not be a bar over arbitration. This may be a turning point in interpretation of tiered dispute resolution clauses that are drafted to foster the cardinal principle of arbitration, i.e., party autonomy.

Endnotes

1 Authored by Gauhar Mirza, Partner, Hiral Gupta, Senior Associate and Purnima Mathur, Associate, *M/S Sanjay Iron and Steel Limited v. Steel Authority of India*, ARB. P. No. 408/2021, High Court of Delhi, 2021 SCC OnLine Del 4566, judgment dated 1 October 2021.

Coram: Suresh Kumar Kait, J.

2 (2009) 2 SCC 55.

3 (2015) 13 SCC 610.

4 (2015) 147 DRJ 175.

PRACTICE AREA EXPERTS

Pallavi Shroff

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

Rishab Gupta

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

Binsy Susan

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

Gauhar Mirza

Partner
+91 70423 98844
E: gauhar.mirza@AMSShardul.com

Tejas Karia

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

Siddhartha Datta

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

Aashish Gupta

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

Shruti Sabharwal

Partner
+91 98107 46183
E: shruti.sabharwal@AMSShardul.com

Anirudh Das

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

Ila Kapoor

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

Smarika Singh

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

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