



A mere reference of another Contract with an Arbitration clause is not sufficient to refer the matter to Arbitration

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In a recent Judgment, High Court of Delhi in Shree Ganesh Metals Vs Glencore International AG (2017 SCC Online Del 11435) that a mere reference of another Contract with an Arbitration clause stating that the terms of that contract would apply, is not sufficient to conclude the existence of an arbitration clause in the contract entered later. Relying on a Judgment in the matter of **M.R. Engineers and Contractors Pvt Ltd Vs Som Datt Builders Limited (2009) 7 SCC 696** by the Supreme Court of India it was held that a general reference to another contract will not be sufficient to incorporate the arbitration clause from the referred contract into the contract under consideration. There should be a special reference indicating a mutual intention to incorporate the arbitration clause from another document into the contract.

Facts and contentions: A suit for declaration, Permanent Injunction and Recovery of USD 12,00,000 was filed by the plaintiff against the defendants and the defendant filed an application under S.45 of the Arbitration and Conciliation Act,1996 (the matter is an international commercial arbitration seeking to invoke the arbitration agreement. The contention of the defendant is that there were arbitration agreements between the parties in the previous agreements. The parties desirous of entering to a further agreement. The business modalities were reduced into writing in an email dated 10.03.2016 (Herein after business confirmation email).

The said email the commercial terms such as quality, quantity, quotation period, delivery system, price, payment, value of the letter of credit, performance Bank guarantee etc., Besides te said commercial terms in also recorded “All other terms and conditions as per last contract between GIAG and Shree Ganesh metals”. Plaintiff also responded “*We confirm the same terms as said just one thing that provisional price of both, either the LC or invoice will be average of last 5 LME days*”. Pursuant to the written confirmation from the plaintiff, agreement dated 11.03.2016 incorporating all terms of the “Business confirmation E-mail” and the plaintiff’s email dated 11.03.2016 was entered. It was urged that the 2016 contract, like all previous contracts, provided for resolution of disputes through arbitration.

The plaintiff contended that there was no express or implied acceptance of the terms of the earlier contract by the plaintiff and the 1st response of the plaintiff was a conditional one. Moreover, there was no acceptance to the offer of the Respondent. Hence there was nothing to show that there was a concluded arbitration agreement between the parties.

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Conclusion: High Court of Delhi dismissed the application filed under S.45 of the Arbitration and Conciliation Act, 1996 holding that there is nothing on record to show that the parties had either an implied or an express arbitration agreement. It is well settled that the intention of the parties to refer the disputes to arbitration must be clear and specific. In such matters, it is the duty of the court to construe correspondence with a view to find out if there was any meeting of mind between the parties which could create a binding contract between them. The parties should have a clear intention, at the time of contract, to submit any disputes or differences as may arise to arbitration then alone the reference contemplated under S.45 of the Act can be enforced. The court further held that mere reference of contract number by the applicant in its communications cannot be taken as consent by plaintiff for arbitration clause. In the absence of clear intention of both the parties, agreement for arbitration cannot and should not be inferred. The Court relied on the following judgments **(1993) 3 SCC 137, M Dayanand Reddy Vs A.P. Industrial Infrastructure Corporation Limited, Alimenta S.A Vs National Agricultural Co-operative Marketing federation of India Limited (1987) 1 SCC 615 & M.R. Engineers and Contractors Pvt Ltd Vs Som Datt Builders Ltd (2009) 7 SCC 696.**