Substance over Form : Judicial Formalism in Interpreting Arbitration Clauses

The decision of the Supreme Court of India ('**Court**') in *M/s Alchemist Hospitals Ltd. v. M/s ICT Health Technology Services India Pvt. Ltd.*[1], raises important questions about the interpretation of arbitration clauses and throws light on the essential ingredients of Section 7 of the Arbitration and Conciliation Act, 1996 ('**Act**') as well as the extent to which courts should prioritise the literal text of a clause over the evident intention of the contracting parties. The Court's decision in this case to disregard the dispute resolution clause as a valid arbitration agreement undermined party autonomy that forms a cornerstone of arbitration jurisprudence.

Factual Background

The case arises out of an application filed under Section 11(6) of the Act by the appellant before the Hon'ble High Court of Punjab and Haryana at Chandigarh ('**High Court**'). The appellant, Alchemist Hospitals Ltd. ('**Alchemist/Appellant**'), had entered into an agreement with the Respondent, ICT Health Technology Services India Pvt. Ltd. ('**ICT Health Technology/Respondent**'), for the implementation of a hospital management software ('**Software Implementation Agreement**'). Clause 8.28 of the Software Implementation Agreement titled 'Arbitration' laid down a three-tier dispute resolution mechanism: first stage being, negotiation between executives; second, 'arbitration through senior management comprising respective Chairmen of the two parties (Arbitrators)'; and finally, if the dispute was not resolved within fifteen days after arbitration, the aggrieved party could seek remedies through courts of law. In this regard, the relevant Clause 8.28 of the Software Implementation Agreement is reproduced below for ready reference:

> '***8.28 – Arbitration***
>
> *The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives, who have authority to settle the controversy and who are at a higher level of management, than the persons with direct responsibility for administration of this Agreement.*
>
> *If the matter is not resolved by negotiation pursuant to paragraph above, then the matter will proceed to mediation as set forth below:*
>
> *Any dispute, controversy or claim arising out of or relating in any way to the Agreement/the relationship, including without limitation, any dispute concerning the construction, validity, interpretation, enforceability or breach of the Agreement, shall be resolved by arbitration*

[1] 2025 SCC OnLine SC 2354.

through senior management comprising respective Chairmen of the two parties (Arbitrators). Should the dispute not be resolved within fifteen (15) days after arbitration, the complaining party shall seek remedies through the courts of law. The demand for arbitration should be made within a reasonable time (maximum 60 days) after the dispute or matter in question has arisen.'

After signing the Software Implementation Agreement, the Appellant began implementing it in November 2018, however, the implementation is alleged to have faced repeated procedural delays and technical failures by the Respondent, such as slow performance, billing errors, and incomplete diagnostic integration. Despite this, it is the Appellant's case that it allowed a second implementation attempt, and the software went live on 1 January 2020, however, persistent operational issues led to its rollback on 1 April 2020. Thereafter, the Appellant invoked Clause 8.28 of the Software Implementation Agreement, issued a notice seeking appointment of an arbitrator, and later moved the High Court under Section 11(6) of the Act for appointment of a sole arbitrator. Before the Hon'ble High Court, the Respondent contended that there is no arbitration agreement between the parties. The High Court after hearing both the parties, dismissed the application, holding that Clause 8.28 was not a valid arbitration agreement but merely a mechanism for negotiation and mediation. It was also observed that there was no element of finality or binding effect attached to Clause 8.28 of the Software Implementation Agreement and the said clause did not indicate any intention of the parties to refer the disputes to a private adjudicatory forum or to abide by its decision.

Proceedings before the Court

The single issue that arose for determination was whether Clause 8.28 of the Software Implementation Agreement can be considered to be a valid arbitration agreement under the Act or not?

While addressing the above issue, the Court examined the essential ingredients and requirements stipulated under Section 7 of the Act**.** The Court noted that the first two conditions namely, (i) the dispute must arise in connection with a defined legal relationship, and (ii) the agreement must be in writing were undisputed between the parties. The core controversy, however, centred on whether the parties had in fact agreed to refer the disputes and differences arising out of the Software Implementation Agreement to arbitration under Clause 8.28**.**

While affirming the Hon'ble High Court's order, the Court reasoned that the clause used the term 'arbitration' repeatedly, however, it lacked the essential attributes of an arbitration agreement under Section 7 of the Act i.e. a clear intention to submit disputes to a private adjudicatory forum, finality

of decision, and a binding effect on the parties. It further observed that the Chairmen of the companies could not be treated as neutral adjudicators and that the clause expressly permitted recourse to courts after the 'arbitration' failed, thereby negating any binding arbitral process. The Court concluded that the mere use of the term 'arbitration' was insufficient and that the clause, when read as a whole, only envisaged a good-faith effort at internal resolution rather than a genuine reference to arbitration.

Analysis

While the Court's reasoning aligned with earlier precedents such as *K.K. Modi v. K.N. Modi*[2], *Jagdish Chander v. Ramesh Chander*[3], and *Mahanadi Coalfields Ltd. v. IVRCL AMR JV*[4], the approach reflected an overly technical application of those principles. The objective of Section 7 of the Act is to recognise the parties' intention to arbitrate, not to penalise imperfect drafting. In the present case, both parties consciously chose to include an 'Arbitration' clause in their contract, invoked it in correspondence, and never once denied its existence prior to the Section 11 Application. The same strongly indicated a mutual understanding that disputes were to be resolved privately through an arbitral process. Yet, the Court dismissed this context entirely, holding that since there was 'no arbitration agreement in the first place', such correspondence was irrelevant.

Pertinently, the Act does not prescribe any particular form for an arbitration agreement. It is well-settled that the primary element to be discerned from the terms of an agreement is the intention of the parties to submit their disputes to arbitration (*Babanrao Rajaram Pund v. Samarth Builders & Developers*[5]). If the language of the agreement clearly indicates an intention of the parties to refer their disputes to a private tribunal for adjudication and a willingness to be bound by its decision, such an agreement qualifies as an arbitration agreement. Admittedly, the absence of specific expressions such as *"arbitration"* or *"arbitral tribunal"* is immaterial, provided the clause otherwise embodies the essential attributes and elements of an arbitration agreement. However, in such cases, the intention of the parties is to be ascertained from the wordings of the agreement or is otherwise clear from the conduct or correspondences exchanged between the parties (*Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd.*[6]

[2] (1998) 3 SCC 573.
[3] (2007) 5 SCC 719.
[4] (2022) 20 SCC 636.
[5] (2022) 9 SCC 691.
[6] (2003) 7 SCC 418).

Notably, the Court's reasoning in the present matter overlooked the commercial realities of contractual dispute resolution. It is common in commercial practice for parties to adopt multi-tiered dispute resolution mechanisms negotiation, internal mediation, and then arbitration before resorting to litigation. The mere fact that a clause allows parties to approach courts after unsuccessful arbitration does not make the arbitration non-binding; it merely provides a procedural sequence for dispute settlement. The Supreme Court's insistence that a valid arbitration clause must contain an explicit statement of 'finality' and 'binding effect' thus narrows the scope of Section 7 of the Act and renders the same inconsistent with its legislative intent. This approach also overlooks the statutory scheme of the Act itself under which an arbitral award is, by operation of law, final and binding on the parties under Section 35, irrespective of whether the arbitration agreement expressly reiterates such finality.

Further, it is important to note that Clause 8.28 of the Software Implementation Agreement in the present case went beyond mere nomenclature and prescribed a definitive trigger for invoking arbitration, requiring that a demand be made within a maximum period of sixty days from the arising of the dispute, an aspect that went entirely unexamined by the Court. The inclusion of a clear and finite time limit evidences certainty of intent and deliberateness in contractual design. Such time bound triggers in multi-tier dispute resolution clauses demonstrate that arbitration was conceived as a structured and mandatory stage, rather than a vague and optional mechanism.

While the arbitration clause in the present case designated the respective Chairmen of the parties as 'arbitrators', the Court, rather than adopting a restrictive interpretation, ought to have adopted a pro-arbitration and purposive approach to uphold the clause. Significantly, Clause 8.28 of the Software Implementation Agreement, employed the word *'shall'* while stipulating that disputes '*shall be resolved by arbitration'*, a formulation that ordinarily denotes a mandatory obligation rather than a discretionary option. The Court, while emphasising that the intention to arbitrate must be definitive, failed to analyse the legal effect of the language used in Clause 8.28. The use of *'shall'* reflected certainty and clarity of intent of the parties to refer the disputes to arbitration. When read together, the Clause demonstrated a conscious and binding choice of arbitral adjudication by the parties.

Moreover, the Respondent's attempt in the present case to evade the clause by advancing superficial objections at the Section 11 stage ought not to have been countenanced. It is trite law that no party should be allowed to take advantage of inartistic drafting of arbitration clause in any agreement as long as clear intention of parties to go for arbitration in case of any future disputes

is evident from the agreement and material on record including surrounding circumstances (*Visa International Ltd. v. Continental Resources (USA) Ltd.*[7] The designation of internal members as arbitrators thus, at most, constituted a procedural irregularity capable of being cured by the Court under Section 11 of the Act rather than a substantive defect nullifying the parties intent. In the spirit of party autonomy and minimal judicial intervention, the Court could have read down this irregularity and directed the appointment of an independent arbitrator to give full effect to the parties' evident agreement to arbitrate. In this regard, the Hon'ble Supreme Court in the case of *Enercon (India) Ltd. v. Enercon Gmbh*[8]*,* held that when faced with a seemingly unworkable clause, it is the duty of the court to make the same workable within the permissible limits of law and a common sense approach has to be adopted in such cases to give effect to the intention of the parties to arbitrate.

The present decision also misses an opportunity to reaffirm India's pro-arbitration stance. In *Powertech World Wide Ltd. v. Delvin International General Trading LLC*[9], the Court had held that subsequent correspondence between parties could clarify an ambiguous arbitration clause and establish a binding agreement to arbitrate. A similar approach here treating Clause 8.28 as an irregular but valid arbitration clause supplemented by the parties' conduct would have honoured both the commercial intention of the parties and the statutory objective of promoting arbitration as an alternative to court litigation. Instead, the judgment treated the absence of formal language of finality as fatal.

Ultimately, the decision in *Alchemist Hospitals* illustrates a troubling trend of judicial formalism in the interpretation of arbitration clauses. By focusing on the semantic imperfections of the clause rather than its substance, the Court has elevated formalism over intent. When parties have consciously incorporated an arbitration clause and acted upon it, courts ought to give effect to that intention rather than defeat it on technical grounds. Party autonomy is the cornerstone of arbitration law and requires that courts adopt a liberal and purposive approach in determining the existence of arbitration agreements. The Court's strict reading of the clause in this case is normatively regressive. It risks encouraging further litigation over the form of arbitration clauses, thereby undermining the very objective of the Act, to ensure that parties who choose arbitration

[7] (2009) 2 SCC 55).
[8] (2014) 5 SCC 1.
[9] (2012) 1 SCC 361.

as their mode of dispute resolution are not denied that choice through hyper-technical interpretation.