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Unsigned but Binding: Indian Jurisprudence on Consent to Arbitrate

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Introduction

Imagine an arbitration clause that appears to meet all substantive requirements except that it is unsigned. Does this flaw permit a party to bypass and derail the arbitration? For years, legal practitioners have regarded signatures to be the definitive proof of consent. However, the Supreme Court of India offers a more nuanced perspective on this issue.

In *Glencore International AG v. Shree Ganesh Metals* [2025 INSC 1036], the Apex Court of India explained that arbitration agreements need not always be in the form of a signed document. What is important is whether the written record, read together with the conduct of the parties, evidences a genuine commitment to arbitrate. Put simply, consent can be demonstrated through communications and actions that show mutual intent to submit disputes to arbitration.

Statutory Framework in India

Section 7 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") defines an "*arbitration agreement*" as an agreement to submit present or future disputes to arbitration in respect of a defined legal relationship, whether contractual or not.

Notably, Section 7 of the Arbitration Act resembles Article 7 of the UNCITRAL Model Law on International Commercial Arbitration 1985, where the focus is not on signatures but on written evidence of mutual consensus.

The requirement that an arbitration agreement must be in writing can be satisfied through various means, as outlined in Section 7(4) of the Arbitration Act. One such obvious method involves signing a document. Additionally, an agreement to arbitrate may be established through an exchange of correspondence, such as letters or emails, that explicitly demonstrates the parties' intention to refer disputes to arbitration. Furthermore, such an agreement can also be inferred from pleadings, where one party asserts the existence of an arbitration agreement and the other party does not deny it. Section 7 also recognises that incorporation by reference is permissible.

Tracing the Indian Jurisprudence

When contractual documents, correspondence, or conduct unequivocally indicate an intention to submit disputes to arbitration, courts are inclined to enforce such agreements. Conversely, when the language suggests only a tentative or conditional intention rather than a definitive obligation, courts exhibit restraint in compelling parties to arbitrate.

The case of *Smita Conductors Ltd. v. Euro Alloys Ltd.* [(2001) 7 SCC 728] is among the earliest instances where the Supreme Court of India adopted a purposive approach to interpreting Section 7 of the Arbitration Act. The Apex Court emphasised that an arbitration agreement need not conform to a specific formal structure, provided there is written evidence of the parties' intention to arbitrate. Similarly, in *Great Offshore Ltd. v. Iranian Offshore Engineering and Construction Co.* [(2008) 14 SCC 240], the Supreme Court upheld the validity of an arbitration agreement that was implicitly derived from commercial exchanges between the parties. The Apex Court opined that requirements such as stamps, seals, and signatures are merely administrative formalities that should be disregarded to facilitate a swift, effective, and potentially cost-efficient resolution of disputes. A similar ruling was also rendered by the Supreme Court in *Shakti Bhog Foods Ltd. v. Kola Shipping Ltd.* [(2009) 2 SCC 134].

In *Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia* [(2015) 13 SCC 477], the Supreme Court held that incorporating arbitration rules by reference in a trade agreement is enough to create an arbitration agreement under Section 7 of Arbitration Act. Similarly, in *Inox Wind Ltd. v. Thermocables Ltd.* [(2018) 2 SCC 519], the Apex Court upheld a clause for arbitration printed on standard purchase order terms, despite the absence of separate signatures.

As seen above, the Supreme Court of India has consistently held that an obligation to arbitrate can be inferred even in the absence of a signed instrument.

Analysis

From a review of the Indian judicial precedents, three broad categories of arbitration agreements emerge. The first category includes correspondence,

invoices, and composite records, which have been recognised to satisfy the threshold under Section 7 of the Arbitration Act when they demonstrate a consistent and mutual intention to arbitrate. The key characteristic of cases in the first category is their nonadherence to strict formalism. Instead, it involves carefully examining whether the written documents, together with conduct such as acceptance, part performance, or payment, suggest that a binding agreement to arbitrate has been reached.

The second category pertains to incorporation by reference, which has also been regarded as an acceptable method for establishing an arbitration clause. When parties knowingly adopt a document containing an arbitration clause, or when institutional rules are expressly incorporated into a commercial agreement, courts generally tend to enforce such clauses.

The third category of cases merits a closer scrutiny. Language indicating arbitration as a possibility rather than an obligation does not satisfy the requirements of Section 7. Expressions such as "*may be referred to arbitration*" or terms making arbitration contingent upon further consent do not establish a present obligation to arbitrate. The third category of arbitration agreements has been dealt with by various High Courts across India.

For instance, in *Pure Diets India Ltd. v. Lokmangal Agro Industries Ltd.* [2023 SCC OnLine Del 4486], the Delhi High Court examined a contractual clause which permitted parties to seek equitable or interim relief "*before or during any arbitration*". The petitioner argued that this wording was enough to trigger Section 7 of the Arbitration Act. However, the Delhi High Court clarified that the clause did not impose a current obligation to arbitrate. Instead, it only indicated that, should arbitration occur in the future, some related remedies could be resorted to. The High Court noted that simply mentioning the words "*arbitration*" or "*arbitrator*" does not automatically classify a contractual clause as an arbitration agreement. Referring to the decision in *Jagdish Chander v. Ramesh Chander* [(2007) 5 SCC 719] and *K.K. Modi v K.N. Modi* [(1998) 3 SCC 573], the Delhi High Court clarified that provisions which only suggest a future possibility or seek additional consent are not considered arbitration agreements, but are instead agreements to agree.

The Calcutta High Court addressed a similar issue in the case of *Sunil Kumar Samanta v. Sikha Mondal* [AP/15/2022]. The contested clause stated that disputes "*may*" be referred to arbitration. The Calcutta High Court interpreted this language as permissive rather than mandatory, leading it to

conclude that the applicant failed to prove a mutual agreement to arbitrate.

In *BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Ltd.* [(2025 INSC 874)], the Supreme Court upheld the approach of the Delhi High Court in *Pure Diets* and the Calcutta High Court in *Sunil Kumar*, where clauses containing permissive language were deemed non-binding and not constituting an arbitration agreement under Section 7 of the Arbitration Act.

Conclusion

In summary, the Indian jurisprudence balances between form and substance: while Section 7 requires an arbitration agreement to be in writing, courts have clarified that this requirement can be fulfilled through various documentary records and the conduct of the parties, provided these collectively demonstrate a clear, mutual intention to arbitrate, as confirmed in *Glencore* and other precedents. Conversely, the courts reject vague or conditional language that treats arbitration as a future possibility, as also evidenced by recent rulings.

For practitioners, the key takeaway is to draft clauses that clearly establish a mutual obligation to arbitrate, maintain transparent documentary evidence of acceptance or part performance, and incorporate references where suitable.

Conversely, a party opposing arbitration should focus on proving the absence of mutual consent or that the clause is merely permissive. This balanced approach enhances commercial certainty, promotes efficient dispute resolution, and protects parties from arbitration where genuine consent is absent.

ABOUT THE AUTHORS

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