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THE MMTC LTD. V. STERLITE INDUSTRIES (INDIA) LTD (1996)[1]

INTRODUCTION

Arbitration has long been recognized as a crucial mechanism for resolving commercial disputes, enabling parties to bypass the lengthy and often expensive judicial process. The MMTC Ltd. v. Sterlite Industries (India) Ltd. case, decided in 1996, occupies an important place in Indian arbitration jurisprudence. It deals with the interpretation and enforceability of an arbitration agreement that was executed under the earlier legal regime[2] (the Indian Arbitration Act, 1940) but was later subject to the provisions of the newly enacted Arbitration and Conciliation Act, 1996 (the "New Act")[3]. The New Act contained new provisions that governed arbitration agreements (Section 7) and set out specific machinery for the appointment of arbitrators (Sections 10 and 11).

FACTUAL BACKGROUND

In December 1993, MMTC Ltd. and Sterlite Industries (India) Ltd. entered into a commercial contract. The agreement provided that Sterlite appointed MMTC as a consignment agent for the storage, handling and marketing of continuous-cast copper rods manufactured by Sterlite. MMTC was entitled to 500 rupees per metric tonne as a service charge. The arbitration clause VII was embedded within this contract which stipulated that any dispute arising "under or out of or relating to the construction, meaning and operation or effect" of the agreement would be referred to arbitration. The clause provided that each party would nominate one arbitrator. The two appointed arbitrators were then required to jointly select a third arbitrator (the umpire or presiding arbitrator) before the arbitration proceedings could commence. The decision rendered by the arbitrators (or if they fail to agree, by the umpire) would be final and binding. The arbitration was to be conducted under the rules and provisions of the Indian Arbitration

[1] MMTC Ltd. v. Sterlite Industries Ltd. (1996) 6 SCC 716.

[2] The Arbitration Act 1940.

[3] The Arbitration and Conciliation Act 1996.

Act, of 1940. Bombay was designated as the venue for arbitration. The dispute arose when Sterlite Industries claimed that MMTC had failed to pay certain dues under the contract. In response, Sterlite invoked the arbitration clause. On January 19, 1996, Sterlite sent a formal notice to MMTC, which was received on January 31, 1996. Subsequently, on February 7, 1996, Sterlite appointed its arbitrator—Justice M.N. Chandurkar (Retd.), a highly respected former Chief Justice of the Madras High Court. In contrast, MMTC maintained that arbitration was not an appropriate remedy under the circumstances and chose not to appoint its arbitrator at that juncture. This inaction set the stage for Sterlite to approach the Bombay High Court, seeking enforcement of the arbitration agreement pursuant to the New Act, which had come into force by that time.

RULING OF THE HIGH COURT

In the Bombay High Court, MMTC advanced two key arguments:-

First, it contended that the arbitration clause was not attractive and should not be invoked for dispute resolution in this case as it is inapplicable.

Second, MMTC argued that the arbitration agreement was procedurally flawed because it provided for the appointment of two arbitrators, an even number of arbitrators, which they claimed was contrary to Section 10(1) of the New Act.

The Bombay High Court rejected MMTC's contention on both counts and provided time to MMTC Ltd. to appoint an arbitrator. The Court held that if MMTC fails to appoint an arbitrator, then the arbitrator appointed by Sterlite would be the sole arbitrator according to section 10(2) read with section 11(5). Though MMTC appointed Shri S.N. Sapra as their arbitrator, aggrieved by this decision, MMTC appealed to the Supreme Court through a special leave petition.

ANALYSIS OF THE JUDGEMENT

A) PETITIONER'S ARGUMENTS

The key arguments advanced by MMTC's counsel, Shri Ashok Desai were:

• Invalidity Due to Even Number Provision: MMTC argued that because the arbitration agreement provided for an even number of arbitrators, it was inconsistent with Section 10(1) of the New Act. They contended that this inconsistency rendered the agreement invalid and unenforceable under the New Act. MMTC further asserted that if the arbitration clause was

void, then the only remedy available was to pursue litigation in the courts rather than arbitration.

• Non-application of Section 10(2): MMTC maintained that since there was no failure to determine the number of arbitrators (since the agreement had specified two), Section 10(2) of the New Act which provides for the appointment of a sole arbitrator in the absence of a determination did not apply to this case. They also contended Section 10 of the New Act to be contrary to the 2nd part of the First Schedule of 1940's Arbitration Act.

B) RESPONDENT'S ARGUMENTS

The key arguments advanced by Sterlite's counsel, Shri Dave were -:

• Valid and Enforceable: The counsel contended that Section 10 of the New Act and the corresponding provision of the old act were consistent with each other as they were both substantially alike. The counsel urged that it is imperative for us to look at the new provisions to promote and implement alternate dispute resolution as well as try to enforce earlier arbitration agreements through the new act. The respondent further explained that Section 10 of the New Act is purely a procedural or "machinery" provision. Its purpose is to facilitate the operation of the arbitration process and prevent deadlock by requiring an odd number of arbitrators. Sterlite emphasized that a provision specifying two arbitrators is not a substantive defect that can invalidate the agreement.

• Validity Under Section 7: The counsel argued that as the arbitration agreement was in writing it clearly met all the conditions under section 7 of the Act hence it should be a valid agreement.

• Enforcement of the Appointment Process: With both parties having nominated their arbitrators, conditions for applying section 11(3) were met. Sterlite argued that this section required the two arbitrators to appoint a third arbitrator (the presiding arbitrator) and that the failure of the arbitrators to appoint this third member automatically invoked the remedial mechanism in Section 11(4)(b), whereby the Chief Justice of the High Court is empowered to make the appointment.

C) HOLDING OF THE SUPREME COURT

The Supreme Court carefully analysed the statutory provisions of the New Act, particularly Sections 7, 10, and 11, and reached several important conclusions:

On the Validity of the Arbitration Agreement: The Supreme Court held that the validity of an arbitration agreement is determined by Section 7 of the New Act. Section 7(3) determines it needs to be in writing and section 7(4) dictates the matter which is written. As section 7 does not lay down any conditions requiring mentioning the number of arbitrators in the agreement, the arbitration clause was valid and enforceable.

On the Procedural Nature of Section 10: The Court held Section 10 to be responsible for determining the number of arbitrators. Section 10(1) regulates the number of arbitrators with the exception that it should not be an even number. If section 10(1) fails, section 10(2) comes into action where there is a sole arbitrator in the arbitral tribunal. The court held this section to be a procedural safeguard to ensure the effective functioning of the arbitration tribunal by preventing the potential deadlock that might occur if an even number of arbitrators were present. The numerical provision is, therefore, a "machinery provision" that does not go to the root of the arbitration agreement. Consequently, even if the agreement specifies an even number of arbitrators, it does not render the arbitration agreement null and void under the new act.

On the Appointment of the Third Arbitrator: The arbitration clause in the agreement supports that each party would nominate one arbitrator and the two arbitrators shall appoint an umpire before proceeding with the arbitration to prevent a situation of deadlock. This clause is in compliance with section 11(3) of the new act and simultaneously follows para 2 of the first schedule of the Arbitration Act of 1940. The only condition mentioned in the laws is that the arbitrators must select an umpire within one month of their appointments. If this condition failed, the chief justice or anyone under him was required to appoint the third arbitrator according to section 11(4)(b). Since Justice Chandurkar and Justice Sapra failed to appoint the third arbitrator within the prescribed thirty-day period, the Supreme Court held that the proper remedial mechanism had been triggered by the inaction of the two arbitrators under section 11(4)(b) and disposed of the appeal due to no material defect being present.

D) STRENGTHS OF THE JUDGEMENT

Upholding Party Autonomy and Intent: The judgment underscores the idea that parties' choice to resolve disputes through arbitration must be respected. The court affirmed that an arbitration agreement should be enforced as long as it meets the fundamental requirements laid down in Section 7. By insisting that technical or procedural issues regarding the number of arbitrators

should not invalidate the arbitration agreement, the judgment aligns with the original intent of the parties.

Bridging the Old and New Legal Frameworks: The judgment effectively bridges the gap between the earlier Arbitration Act of 1940 and the New Act of 1996. It ensures that arbitration agreements made during the regime of the old act are not overthrown by the shift to the provisions of the new act. This continuity is important for commercial transactions' certainty and stability.

Promotes Efficient Alternative Dispute Resolution: This decision aligns with the wider legislative goal of the Arbitration and Conciliation Act, of 1996 which is to promote arbitration as an efficient and effective means of resolving disputes outside the court. By interpreting procedural provisions such as section 10 as "machinery" rather than a substantive defect, the Court ensured that arbitration proceedings could proceed without unnecessary delays or invalidation of agreements. In my opinion, the interpretation of the court in this case upholds the principle of minimal judicial intervention. As laid down in section 5 of the ACA Act 1996, it allows the parties to settle their disputes through arbitration without unnecessary court involvement. This judicial deference to ADR helps reduce unnecessary litigation and promotes arbitration as a viable alternative to litigation.

E) SHORTCOMINGS OF THE JUDGMENT

Probable Ambiguity in Procedural Application of Section 11(4)(b): While the judgment clarifies that the Chief Justice may appoint the third arbitrator when the parties fail to do so, it places considerable discretionary power in the hands of the Chief Justice or their designate. In my opinion, this fallback mechanism could lead to inconsistent results depending on which judicial officer is making the appointment with varying levels of scrutiny, potentially leading to unequal outcomes in similar cases.

Concerns regarding Fairness and Equality: While the judgment dismisses the issue of an even number of arbitrators as merely a "machinery" provision, it does not thoroughly address the potential risks of deadlocks in decision-making. A more detailed exploration of how the appointment of a third arbitrator effectively mitigates this risk, along with potential alternative approaches, could have provided more robust reasoning by the Court on how such deadlocks might affect the fairness of the process if the fallback mechanism is not applied consistently. For instance, by not engaging deeply with why the parties agreed to an even number in the first place, the court misses an opportunity to address potential underlying concerns about the

effectiveness and fairness of the agreed-upon arbitration structure. This raises concerns about whether the court has given a thorough judgment.

Limited Engagement with Comparative International Practices: Although the decision focuses on a strict interpretation of the relevant sections of the New Act, which provides clarity, it could have enriched its analysis by considering how similar issues are handled in international arbitration contexts. This approach would have provided additional perspectives on how to balance procedural rigour with fairness and efficiency, thereby reinforcing the judgment's rationale in a globalized commercial environment.

EVOLUTION IN JUDICIAL PHILOSOPHY IN INDIAN ARBITRATION JURISPRUDENCE

The case of Lohia v. Lohia[4] took place 6 years after this judgement was passed. As confirmed by M.P Raju[5], the court in this case sided with the MMTC judgement and held that if the parties have expressly provided for the appointment of only two arbitrators then it does not render the agreement invalid. They have analysed and taken a step further to hold that parties need not appoint a third arbitrator under section 11(3) only at the beginning of the proceedings but can very well do so if and when they differ. By doing so, they protect the arbitration proceedings from being frustrated. According to the Lohia judgement, the opinion of the two arbitrators when in consensus prevails over the third arbitrator when appointed.

The recent case of Garware Walls Ropes v. Coastal Marine Constructions[6] of 2019 builds upon and refines the judgement laid down in the MMTC case. The concept laid down in the MMTC case was that when there were issues in the machinery provisions it would not undermine the validity of the arbitration agreement as long as it met the requirements under section 7 and held the parties' intention to arbitrate as paramount. The concept laid down by the Garware case is that it emphasizes the independence and survival of the arbitration clause from the entire contract as laid down under section 16 of the Act. The principle signifies that procedural and contractual defects cannot nullify a valid arbitration clause and upholds that commercial intentions don't get defeated through overly formal objections. The progression of these three

[4] Lohia vs. Lohia (2002) 1 Arb LR 493 (SC)

[5] M. P. Raju [Review of LAW OF ARBITRATION & CONCILIATION - PRACTICE AND PROCEDURE (2nd Ed.), by S. K. Chawla] (2005) 47(4) Journal of the Indian Law Institute 567

[6] Garware Wall Ropers Ltd. vs Coastal Marine Constructions (2019) 9 SCC 209.

case laws showcases a continuous judicial commitment to minimising court interference and promoting efficient arbitration.

CONCLUSION

This case took place nearly 30 years ago but is still taught in colleges, cited as precedents as it lays down certain foundational rules of arbitration –

a) This case upholds party autonomy to be of the utmost importance. Since the court upheld parties' own choice of procedure it shows us that party autonomy needs to be kept on a higher pedestal than rigid procedural formalities.

b) By holding Section 10 as a machinery provision and not a substantive essential of the arbitration agreement, the Courts today cite this case to justify remedial fixes rather than outright invalidating the clauses.

c) Since this case helped synchronise the old and new acts, it helps the Court to date in deciding long-running disputes which began under the old act's mechanism.

This judgement holds a significant position in the Indian Arbitration jurisprudence. It effectively harmonizes the agreements that took place before 1996 with the new act of 1996. It underscored how technical and procedural discrepancies such as having an even number of arbitrators do not render the arbitration agreement invalid. The judgement is paramount to party autonomy and their mutual intention to arbitrate. Even the judgements that came later showcase how the judgement taken in this case was accurate as they relied on it and refined it to meet their case and changes that occur with time. These cases together showcase a belief in safeguarding commercial parties' intentions, minimising court interference and promoting arbitration as an effective and practical resolution tool.