

# HIGH COURT OF DELHI UPHOLDS ARBITRATION CLAUSE DESPITE SPECIFYING 'EVEN' NUMBER OF ARBITRATORS

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In a recent decision titled *M/s Talbros Sealing Materials Pvt. Ltd. Vs M/s Slach Hydratecs Equipments Pvt. Ltd.*<sup>1</sup>, the Hon'ble High Court of Delhi, while allowing a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), reinforced the principle that procedural irregularities, such as specifying 'even' number of arbitrators, do not invalidate an arbitration agreement if the parties' intention to arbitrate is evident.

## THE ARBITRATION CLAUSE IN DISPUTE:

*"The order placed on us whether directly or through our branch offices shall in all respect be considered as an Indian Contract and all disputes and differences arising out of the contract or touching the same be referred to two arbitrators one to be appointed by each party for the decision. The venue of Arbitration shall be in Delhi and the award of the Arbitrators shall be filed in a competent court at Delhi. Provisions of Indian Arbitrators Act, 1940 shall govern the Contract. All disputes shall be subjected to Delhi Jurisdiction only."*

The counsel for the Respondent opposed the petition inter-alia urging that reference to two arbitrators is contrary to the provisions of Section 10 of the Arbitration Act which stipulates that:

*"10. Number of arbitrators. – (1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number. (2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator."*

Interestingly, the Hon'ble High Court of Delhi, though agreed with the objection of the Respondent that appointment of even number of arbitrators is contrary to Section 10 of the Arbitration Act, however, regarding the legality of the arbitration clause, held that arbitration clause cannot be invalidated merely on the ground that the number of arbitrators is even.

The Hon'ble Court whilst thus holding relied upon the following precedents -

In *Babanrao Rajaram Pund v. Samarth Builders & Developers and Anr.*,<sup>2</sup> the Hon'ble Apex Court held that it is the intention of the parties which is to be inferred and the endeavour of the Courts should be to give meaning to the clear and true intention of the parties. Additionally, in *M.M.T.C. Limited vs. Sterlite Industries (India) Ltd.*,<sup>3</sup> the Hon'ble Apex Court had clarified that specifying an even number of arbitrators does not invalidate the arbitration agreement itself. The number of arbitrators is dealt with separately in Section 10 which is a part of machinery provision only for the working of the arbitration agreement.

Moreover, in *Sara International Ltd. vs. Arab Shipping Co. (P) Ltd.*,<sup>4</sup> the Hon'ble High Court of Delhi held that even if parties provide for appointment of only two arbitrators, that does not mean that the agreement becomes invalid. Under Section 11(3) of the Arbitration Act, two arbitrators should then appoint a third arbitrator who shall act as the presiding arbitrator. Such an appointment should preferably be made at the beginning. However, there is no reason why the two arbitrators cannot appoint a third arbitrator at a later stage i.e., if and when they differ. This would ensure that on a difference of opinion the arbitration proceedings are not frustrated. But if the two arbitrators agree and give a common award there is no frustration of the proceedings.

Whilst relying upon the settled legal position, the Hon'ble High Court appointed a sole arbitrator to adjudicate the disputes between the parties.

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2. (2022) 9 SCC 691

3. (1996) 9SCC 717

4. 2009 SCC OnLine Del 122

## CONCLUSION

The Hon'ble High Court's ruling affirms that:

- a) an arbitration agreement's validity is not compromised by procedural anomalies, such as the specification of an even number of arbitrators; and
- b) Section 10 of the Arbitration Act is a machinery provision and not a substantive one affecting the core validity of the arbitration agreement.

This decision reinforces the flexibility of arbitration agreements under Indian law and underscores the judiciary's commitment to honouring the true intent of the contracting parties. It highlights that technicalities should not obstruct the path to arbitration, thus fostering a more pragmatic and intention-based approach to dispute resolution.

