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Evaluation of Drafting and Interpretation of Arbitration Clauses in Commercial Contracts

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Abstract

Arbitration clauses serve as vital mechanisms for dispute resolution in commercial contracts, providing parties with an alternative to traditional litigation. However, the effectiveness of arbitration hinges greatly on the precision and clarity of the clauses drafted within contracts. This article evaluates the drafting and interpretation of arbitration clauses in commercial contracts, scrutinizing the language employed, the specificity of provisions, and the considerations for effective implementation. Drawing on legal principles, case law, and practical insights, this article analysis delves into the nuances of arbitration clause formulation and its implications on dispute resolution efficiency and fairness. Moreover, this article examines what should be the contents in drafting clauses in commercial contracts. Moreover, certain rules of interpretation are mentioned to examine the arbitration clauses in commercial contracts. It is further highlighted that what should be an essential elements of arbitration clause in commercial contracts along with certain principles of drafting. Further emphasises is placed on nexus between statutory and judicial pronouncements in interpreting arbitration clauses. This article examines common pitfalls in drafting and the challenges in interpretation and acts as guidance for practitioners and businesses to navigate the complexities of arbitration clauses effectively. Furthermore, this article underscores the importance of clear and comprehensive arbitration provisions in mitigating disputes and fostering smoother commercial transactions. Lastly, this article contributes to a deeper understanding of the pivotal role played by arbitration clauses in shaping contractual relationships and resolving conflicts in the realm of commercial law.

Keywords: Arbitration; Conciliation; Commercial Courts; Foreign Award; Geneva Convention; UNCITRAL

Introduction

As liberalization, privatization and globalization penetrated into the roots of history and economic books of the country, the structural adjustments coupled with their statutory recognition under the New Economic Policy found a safe haven in the Indian Territory. Amongst the shattering impact and inordinate reverberation such an opening held across various industries and sectors, transactions of commercial nature became dynamic in their personification.

Whilst arbitration, and resultantly it's consonance clauses also regarded as arbitration agreements have existed since time immemorial, they gained accelerated momentum as the world opened up to the Indian economy. Although Section 2(a) of the Arbitration and Conciliation Act, 1996 offers a limited definition to arbitration, so to imply the immateriality of a permanent arbitral tribunal, in layman

terms arbitration is a tool of alternative dispute resolution. It symbolizes a procedure wherein a dispute may be submitted by an agreement between the parties, who shall practice an informal adjudication and prescribe a binding and mandatory dispute. Such an award shall be recognised under Section 36 of the Act as a decree under the Civil Procedure Code, 1908.

In like context, it becomes imperative to ascertain the background in which the judiciary was operating. A rather profuse number of pending cases before the courts, swept all records as alien and unprecedented commercial disputes came to surface post the new economic scheme.

On account of their novel nature, niche requirements and mushrooming strengths, the courts became increasingly incapable of addressing such avant-garde commercial disputes. This judicial impotency became inversely proportional to resorts made to arbitration in lieu of such differences. The following chart will help to understand the drafting clauses to be made in contract:
Define Objective of Arbitration Clause Evaluation -----Identify Key Provisions of Commercial Contract ……. Analyze Arbitration Clause Language-------Evaluate Clarity and Specificity of Language ---------- Assess Compliance with Legal Requirements ---------Consider Jurisdiction and Applicable Law----------Review Dispute Resolution Mechanisms------------- Check for Exclusivity of Arbitration------------Evaluate Arbitration Tribunal Selection Process ------------ Assess Enforcement Mechanisms -------------Evaluate Arbitration Costs and Timeframes -----------Consider Remedies and Relief Available ------------ Assess Confidentiality and Privacy Provisions -------- Evaluate Arbitration Clause for Flexibility --------- Consider International Enforcement Considerations ------- Review Compliance with Best Practices and Standards ------- Assess Overall Effectiveness and Suitability------- Recommend Amendments or Revisions as Necessary.

Clarity of Commercials

Essentially, in light of competently comprehending the drafting and interpretation of arbitration clauses in commercial contracts, it becomes imperative to ascertain, in meticulous detail, the definition one may adopt to a commercial contract.

Accordingly, The Geneva Protocol on Arbitration Clauses, 1923 specified that each state, party to the protocol, must enforce the varying provisions of this protocol solely to contracts which may be regarded as commercial in their approach in accordance with respective national laws. A like definition has been imported in the Geneva Convention on Recognition and Enforcement of Foreign Arbitral Awards followed by the New York Convention on International Commercial Arbitration in 1958. Thereby implying little to no room, to interpret a comprehensive and concrete definition.

For the premier time however, the UNCITRAL Model Laws of 1985, prescribed a conclusive yet inclusive definition to the term in its second footnote. In a wide interpretation, commercial was said to imply matters which arose as a result of commercial relationships, irrespective of them having been contractual or not. This could mean a number of things, supply of goods/services, distribution, agency, factoring, leasing, licensing, banking, financing, joint ventures, etc.

As far as the Arbitration and Conciliation Act, 1996 [1] is concerned, the term "commercial" has not yet been assigned a definition under any provision of the act. Although references have been made to International Commercial Arbitration under Section 2(1)(f). Accordingly, International Commercial Arbitration entails and encapsulates those disputes which arise out of legal relationships, again making it insignificant as to whether those disputes are contractual. Apart from the aforementioned, commercial is used in a synonymous sense and in close nexus with business commerce, as per Black's Law Dictionary.

Acuteness of an Arbitration Agreement

Contrary to popular opinion, an arbitration agreement does not in its strictest form necessarily imply the existence of a distinct agreement altogether, whereby the parties agree to submit their disputes to arbitration as opposed to the traditional mechanism of adjudicatory proceedings. Rather, as per Section 7 of the Arbitration and Conciliation Act, 1996, an arbitration agreement is said to imply an agreement but also includes an arbitration clause. The term is wider than it may appear and inculcates two alternatives at hand.

Section 7(1) prescribes a conventional disposition to the terminology. It reiterates that an agreement in which the parties to a dispute have agreed, that either all or any of their disputes shall be submitted to arbitration, irrespective of whether such disputes are contractual or not but must be arising out of a legal relationship, is an arbitration agreement. On the other end of the spectrum, Section 7(2) prescribes that an arbitration agreement need not always be corollary or run parallel to an underlying contract in the form of a severable agreement. Rather, an arbitration agreement may very well exist in the form of an arbitration clause within the underlying contract, out of which the dispute may have arisen.

Thereby one may draw that the term implying a basis for arbitration. Such an agreement, may also refer no merely present and existing disputes to arbitration, but even those yet to occur ie. future disputes. Upon a competent analysis of

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Section 7 it is evident, that while "arbitration agreement" is a generic concept at the most, it may be further bifurcated into two types. Either, a clause in a contract, which is commonly regarded as an arbitration clause. Or, as a submission agreement, that is to say, a severable agreement from the underlying contract.

In common parlance of arbitration, an arbitration clause may submit only such disputes to arbitration which may arise in the near future, as opposed to those which are in existence at the time of signing of the agreement. It becomes pertinent herein to denote that such disputes may never arise. This is precisely why the parties may choose to define the subject matter of the arbitration by reference to the relationship out of which it derives.

Contrastingly, a submission agreement may dispose off only such disputes to arbitration which are already in prevalence. One may prefer the latter route as although it entails more expenditure for clients, it is often sought to include elaborate descriptions of the subject matter and/or dispute that ought to be arbitrated.

The Chief Clause of Arbitration

Essentially, the pertinence of arbitration clauses is highlighted through the mechanisms of differences in which these alternatives operate vis-a-vis traditional litigation. In a lawsuit, limited flexibility is offered to either party as far as the adjudicating judge is concerned. Moreover, the judge ought to streamline the law narrowly and deliver his verdict. Accordingly, making them heavy on resources, stringent and overtly time consuming in nature.

Whereas, arbitration becomes far more flexible by allowing parties enough autonomy so as to conclusively determine their arbitrator. As procedural laws have little to no weightage within the arbitral tribunal, parties may even choose their own regulatory framework, garnering them with more representation altogether. This coupled with the fact that arbitration is far less time consuming in nature, further emphasizes on its importance.

Perhaps the strongest argument in favor of arbitration clauses is the resource efficiency depicted by it time and again. A lawsuit need not necessarily mean an individual lawsuit, it may very well imply a class-action suit as well. Herein, a number of individuals collect under a singular thread/banner so as to represent their similar grievances. As historical corporate practices have depicted, where an organization submits to a class action lawsuit, heavy penalties and financial incumbencies are attracted, acting as summations of both punitive as well as indemnification damages.

A recent example indicating the chief role an arbitration clause occupies in a commercial contract, was of Johnson & Johnson having to face over $4 Billion USD as punitive measures. This could however, have been easily prevented, by invoking the tool of arbitration, as opposed to enabling class-action lawsuits, which tend to levy significant weight on the courts on account of their strength in individuals. Where, arbitration clauses are entered into, each individual would succumb to individual arbitration with the corporation in question. This increases the possibilities of successful negotiation, avoidance of financial losses, saving of time and management of efforts.

The role of arbitration clauses thereby becomes imperative for not merely a few commercial entities, but all of them in totality. Within such classification, the pertinence occupied by arbitration clauses for high-volume businesses is undeniable. This is directly interlinked with the aforementioned, as a high-volume business susceptibility to class action lawsuits is far more. High volume businesses thereby fall prey to such litigations. By inculcating an arbitration clause within commercial contracts, not only is a preferred scheme for dispute resolution clearly stipulated beforehand but it also ensures risk management, alongside risk mitigation simultaneously.

Herein it becomes pertinent to shine light on arbitration being synonymous to an expert determination process, where an independent and impartial third party (known as the arbitrator) shall act as an expert as opposed to acting merely in the capacity of a judge. Typically, especially in commercial matters, judges are seen lacking the niche and technicalities requisite for the purposes pronouncing a verdict. Furthermore, as arbitration proceedings are confidential as opposed to open in the public, goodwill of commercial entities is secured and safeguarded.

All in all, owing to the benefits they offer against individual lawsuits, class-action lawsuits, cost efficiency, finality, speedy redressal, party autonomy and flexibility; the momentousness of arbitration clauses cannot be denied, particularly in the sphere of commercial contracts.

Quintessential of an Arbitration Clause

Merely the drafting of an arbitration clause within an underlying contract shall not suffice and bring about automated enforceability. Rather, the New York Convention, along with the Panama Convention, demarcate certain requisites for the conventions which may be regarded as essentials for an arbitration clause. Without the mandatory

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attendance of the following four essentials, the enforceability of the clause may be successfully challenged. It is pertinent to denote herein that both the conventions mention analogous requirements.

Primarily, the arbitration must be in writing. Not only does this offer more clarity, stipulate the rights, liabilities and obligations of the parties but most importantly, it allows the parties to recognised that by inculcating such a clause within their agreement, they essentially oust the jurisdiction of the courts. The recognition of the waiver implies that the otherwise-available access to national courts, and judicial remedies, shall no longer be within the purview of their dispute. This seeks to furnish the parties with the gravity of their commitment.

This rationale is sometimes supported by arguments that waiver of access to judicial remedies should require special formalities to ensure due notice and reflection. III-thought out commitments involving the renunciation of the right of access to normal courts and judges ought to be prevented. Other than that, it naturally provides a readily-verifiable evidentiary record of the parties' agreement to arbitrate. Furthermore, it gives impetus to the parties' consideration of and genuine agreement on critical issues such as the arbitral seat, institutional rules, language, number of arbitrators and the like. That being said, the 2006 Revisions to the UNCITRAL Model Law adopt materially less restrictive formal writing requirements in the international sphere, domestically however, Section 7 of the Arbitration and Conciliation Act, 1996 depicts the mandate to be nonetheless present in the municipal climate.

Secondly, just as capacity to contract is a quintessential requisite for a valid contract under Section 10 of the Indian Contract Act, similarly, capacity to arbitrate must exist so as to enter into arbitration clauses. This requirement occupies a prominent role in nullifying arbitration clauses and rendering them unfit for enforcement. The New York Convention, and the Panama Convention, stipulate that where the parties are under some or the other incapacity, the arbitration award may be vacated altogether. Entities entering into commercial contracts must ensure their representatives are well capacitated to enter into the arbitral agreement.

It thereby also becomes increasingly important to specify that the subject matter of the dispute, despite being of commercial nature, must be arbitrable. Where the arbitration is limited to a domestic standpoint and jurisdiction, the municipal laws must be taken into consideration with respect to public policy, or certain matters which may not be arbitrable. In India for example, criminal offenses or matrimonial offenses (other than those involving significant property disputes) are not subject to arbitration, as suggested in the case of Satish Chandra v. Union of India [2].

Finally, in the event of the parties having specified any condition precedent, for a dispute(s) to be referred to arbitration, naturally such an action or event must have occurred. Predominantly, it is witnessed that matters are often referred to arbitration, wherein there exists a lack of jurisdiction of a specified court of the parties. It is only in the occurrence of such a condition, that the matter shall proceed to arbitration. Such conditions must be vividly spelt out, and their degree of obligation should also be unambiguous.

Drafting an Arbitration Clause in Commercial Contracts

The procedure behind arbitration more often than not, commences even prior to the parties having been faced with a dispute capable of rendering to arbitration. Ie. the decision of the parties to inculcate an arbitration clause in their contract, is often the pivotal start of drafting such a clause altogether. It also symbolizes the sheer intricacies that are to be taken into account, and the amount of control the parties must showcase over their arbitration clauses. Drafting such a clause with utmost attention to nuances becomes imperative, otherwise resulting in a pathological clause, i.e. one which results in elongated litigations and ultimately is not enforceable due to its variant ambiguities.

When drafting an arbitration clause however, there isn't a size that fits all contracts. Each clause must be curated with utmost meticulous perfection, tailor made for the contract it is embodied in. The scenario of the contract, legal relationship, non-negotiables of the parties, needs, and applicable laws must be duly considered.

The mushrooming forms of arbitration clauses may be broadly classified into three distinct forms. Namely, basic, generic and complex. Basic clauses represent those that include only the most basic provisions - those that are essential to a viable arbitration agreement. Most institutional model clauses are basic clauses.

General clauses represent a widely present and ever prevalent form of arbitral clauses for significant transactions. They encompass additional optional provisions beyond the essentials found in a basic clause, tailored to address specific challenges (such as determining the venue, language, governing law, negotiation or mediation procedures, etc.). These clauses are typically employed when certain, but not all, potential provisions are required, or when parties are hesitant to depart from institutional regulations or risk contravening mandatory legal requirements, without the capacity or time to conduct extensive research on the matter. Instances of such clauses are evident in agreements within

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the energy sector, such as joint operating, drilling, natural gas supply, and power plant construction agreements.

Complex clauses consist of less common provisions in addition to those widely acknowledged. Crafting these clauses requires meticulous attention to avoid inconsistencies and thorough research to prevent provisions that could render the clause invalid in a specific jurisdiction. Accordingly, there exist principles of drafting arbitration clauses, which aid in eliminating failure of the clause in its entirety.

The Principles of Drafting

Premierly, when drafting an arbitration clause, such provisions must be avoided which run contrary to municipal laws, this may be substantive or procedural in nature. It even inculcates within its ambit, the procedural laws of the seat of the arbitration.

Furthermore, on a broader scale, there are numerous arbitral regulations considered essential to the institution overseeing the arbitration process. Although this principle primarily applies in cases involving an arbitration institute, certain ICC rules or American Arbitration Association rules outline the fundamental guidelines for arbitration. If a clause alters these rules, the institution reserves the right to decline administering the arbitration entirely.

Apart from the aforementioned, the arbitral clause must encompass all necessary provisions and steer clear of clauses that might lead to an ineffective outcome. For instance, the clause should explicitly declare the arbitration as being final and binding, it must also accurately identify the institution designated to oversee the process. Parties are generally advised against specifically naming an individual arbitrator in their agreement and should avoid overly strict qualifications for arbitrators. The chosen procedure should be lucid, practical, and free from confusion or contradiction. If a condition precedent to arbitration is set, either a clear deadline for its occurrence or the means to fulfill it must be outlined.

Last but certainly not least, a drafter may always refer to a basic clause of arbitration from a well-acclaimed or renowned institution that is to cherry pick a clause and make the necessary modifications and alterations to it. However, the amendments made must not result in a pathological clause nonetheless.

Strategic Decisions to be Made When Drafting

Drafters need to recognize that significant strategic choices are frequently made during the drafting phase well before any dispute arises, and these decisions can have a significant impact on future arbitration proceedings. Among the crucial considerations, a few have been mentioned below:

Arbitral Institutions: They vary not only in terms of cost but also in important strategic aspects such as handling multi-party arbitrations, maintaining confidentiality, conducting arbitrator and witness interviews, and managing privileged information. A prudent drafter should familiarize themselves with the notable procedural distinctions among institutional rules. In a subsequent discussion, we will delve into the variances between major arbitration rules and weigh the advantages and disadvantages of opting for ad hoc arbitration over institutional rules such as those of the ICC or AAA.

Location: Choosing the appropriate location for arbitration holds significant strategic importance. Optimal selection involves choosing a venue situated in a country that is a signatory to the New York or Panama Convention, ensuring enforceability through treaty rights. Additionally, the chosen country should possess a judiciary that supports rather than impedes the arbitral process. The courts of the arbitration venue adjudicate procedural disputes and have jurisdiction over matters concerning judicial revision of awards, with the arbitral law of the chosen location typically governing procedural aspects. Moreover, in the absence of explicitly chosen substantive law by the parties, arbitrators may apply the law of the arbitration venue. Furthermore, cost considerations should be factored into the decision-making process when selecting the arbitration venue.

Additionally, Drafters should aim to reach consensus on a language choice that offers flexibility in arbitrator selection without needlessly inflating translation expenses. In cases where parties do not speak the same language, drafters often opt for English as the arbitration language. While selecting English allows for a broader pool of arbitrators, if the parties are not native English speakers or if transactional documents and evidence are not in English, it could lead to escalated arbitration costs.

As is already commonly regarded, all forms of alternative dispute resolution, particularly arbitration emphasis strategically on the pertinence of confidentiality. While the regulations of many arbitral bodies typically don't mandate parties to uphold the confidentiality of arbitration proceedings, parties might consider explicitly addressing the confidentiality of the proceedings, exchanged documents, and the arbitral award itself.

Miscellaneous Elements of Drafting

In many cases, it's advisable for parties to resolve all disputes through arbitration. However, there's also the option to agree to arbitrate only specific types or categories of disputes. If the latter approach is chosen, it's crucial to clearly and precisely define the scope of the disputes subject to

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arbitration in the arbitration clause. Despite careful drafting, there's still a notable risk that one party may argue that a dispute doesn't fall within the scope of the arbitration clause when it arises. Such a preliminary dispute could prolong and increase the expense of resolving the main dispute.

The parties when drafting their respective arbitration clauses, may also have to specify the number of arbitrators who shall arbitrate their dispute. The choice of appointing one or more arbitrators hinges on factors such as the contract's nature, the potential dispute amount, and the complexity of controversies involved. Opting for a single arbitrator is typically more cost-effective and quicker, making it preferable for smaller disputes or those not necessitating the insights of three arbitrators.

Conversely, a three-member tribunal can often offer superior analysis of intricate factual and legal matters, potentially leading to a fairer, more reasoned outcome. Furthermore, with a three-arbitrator panel, parties enjoy greater influence over the tribunal's composition, as each party usually selects one arbitrator. While parties have the freedom to choose any number of arbitrators, it's generally ill-advised to select an even number. In cases where no agreement is reached between parties, the administering institution's rules dictate the number of arbitrators.

In most cases, it's important for the arbitration clause to align with and mirror the selected arbitration rules that will govern the arbitration proceedings. One of the initial decisions parties must make is whether to choose institutional or ad hoc arbitration. Institutional arbitration entails an arbitral institution offering administrative support for managing the arbitration process, including tasks like facilitating communications, scheduling hearings, and compensating arbitrators, in return for a fee. Conversely, ad hoc arbitration places the responsibility of handling such administrative tasks squarely on the parties themselves.

The "seat" of an arbitration refers to the jurisdiction where the arbitration is legally established. Each jurisdiction has its own set of laws governing the conduct of arbitrations taking place within its borders. These laws may include mandatory procedural rules that cannot be overridden by agreement between the parties or decisions made by the arbitrators. Courts in the jurisdiction where the arbitration is seated have the authority to review and potentially annul or set aside arbitration awards. Awards that are set aside by courts in the seat of arbitration may not be enforceable in other jurisdictions. Before drafting an arbitration, clause and selecting the seat of arbitration, legal counsel should carefully examine the arbitration laws of the proposed seat and assess the history of court involvement in arbitration cases in that jurisdiction to ensure that the chosen laws will not impede the resolution of disputes arising from the contract. It is also essential to ensure that the arbitration clause is in line with the arbitration laws of the chosen seat.

In the landmark judgment of UniCredit v. RusChemAlliance [3], the pertinence of demarcating, with utmost clarity, the law which ought to govern an arbitration agreement was highlighted by the court. In other words, the seat of arbitration is a chief component of an arbitration agreement.

Furthermore, when drafting an arbitration clause, language is a topic of quintessential importance. When parties originate from nations with distinct languages, it's crucial to establish the language for arbitration. Without such specification, arbitrators often default to the language of the contract for arbitration proceedings, though exceptions exist. In cases wherein, the parties hail from countries sharing a common language, including a language provision may not be obligatory, yet it could still be prudent. It's important for parties to recognize that opting for multiple languages can increase both the expenses and duration of proceedings, hence, in most scenarios, selecting a single language is advisable.

While many regulations stipulate that arbitral awards are conclusive and obligatory for the involved parties, it's usually recommended to incorporate such a phrase and/or sentence as an additional precautionary measure. Statements regarding the parties' prompt adherence to awards and waiver of any recourse avenues are included to reinforce the award's conclusiveness.

Regrettably, due to its placement as one of the final negotiated contractual elements, the arbitration clause is frequently added hastily, often with parties resorting to standard form clauses. However, neglecting to include crucial provisions or customizing the arbitration clause to suit the particularities of the contract can lead to inefficiencies, avoidable disputes, and escalated costs when disputes arise. Nevertheless, when uncertain, opting for a straightforward clause such as those found in model institutional clauses may be the most prudent choice.

Interpretation of Arbitration Clauses in Commercial Contracts

Doctrine of in Favorem Validitatis: In a holistic sense, a rather wide connotation of interpreting arbitration agreements suggests that one must acknowledge such a clause/agreement in light of the In Favorem Validitatis principle. In simpler words, good faith ought to be employed when interpreting the validity of an arbitration clause, and the validity of the same must be upheld in the majority of the

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plausible scenarios at hand. Such a position had also been reiterated in the case of Kaplan v.

First Options of Chicago, Inc [4]. Such a principle is further supported and/or substantiated by the Presumptive Validity Principle and the Principle of Separability Presumption, amongst many precedential case laws which set the tone, at least at the municipal level.

The aforementioned principle has been quoted in a multitude of court-room decisions therefore such as Fiona Trust & Holding Corp v. Privalov [5] and Energy Transport Ltd. v. M.V.San Sebastian [6].

Doctrine of Separability Presumption: Primarily, it becomes quintessential to ascertain the Separability of Autonomy of the Arbitration Agreement at hand. From a historical lens, the position had not been as vibrant, so to entail a separate existence of the arbitration clauses. Rather, it was regarded and denoted as merely an accessory to the underlying contract, which, if proven to be invalid would ensure the same fate over the arbitration agreement as well. Ultimately, the jurisdiction of arbitrators stood largely in question, alongside the challenged validity of agreements.

It would be argued that an arbitration agreement, constituted merely a part and parcel of the underlying agreement, and where such a contract is deemed invalid, null or void in the eyes of law, the arbitrators would too, ultimately lack any jurisdiction to be able to give effect to such a provision.

Accordingly, a legal fiction was adopted by various developed legal systems across the globe to give effect to arbitration clauses, and supersede the obstacles often faced at times of enforcing arbitration agreements. As a rudimentary provision, thereof, it had been reiterated that the arbitration agreement, much like the Doctrine of Severability finding mention in Article 137 of the Indian Constitution shall constitute a distinct part from the underlying agreement as a whole. In other words, the arbitration agreement shall be deemed as juridically independent.

The existence of this principle in interpreting arbitration agreements, stems from four cornerstones ideologies [7]. Primarily, the intention of the parties to require arbitration of any dispute arising between them, including disputes over the validity of the contract. Secondly, the presumption holds true in light of preventing an unwilling party from avoiding its earlier commitment by alleging the invalidity of the underlying contract. Next, as the arbitration agreement and the underlying contract are considered as two distinct agreements altogether, the insufficiency in fulfilling the formalities of the underlying contract shall not result in the invalidity of the arbitration agreement. Lastly, in the unfavorable event wherein the doctrine of separability presumption is discarded and unemployed in the interpretation of such a principle, the courts must rule the merits of the disputes as opposed to submitting to arbitration.

In the case of Mulheim Pipe Coatings GmbH v. Welspun Fintrade Ltd [8], it was held that the rationale, logistics or explanation which may be devised behind the separability presumption connote that the parties to such an agreement, have at the first instance agreed to submit their disputes to arbitration, thereby waiving the jurisdiction of the courts. Therefore, implying that their rights and obligations, too, ought to be determined by such an arbitral tribunal.

Conclusively, it may be seen, from referring to the case of Tobler v. Justizkommission des Kantons Schwyz [9], that although an arbitration clause exists, in all technicality within the same document as that of the underlying contract, intrinsically, it presents itself as an independent agreement nonetheless of a special nature. From the Indian context, this doctrine is upheld in Article 16 of the Uncitral Model Laws, to which India is a party. Accordingly in the case of Re. Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996, and the Indian Stamp Act, 1899 [10]. The Supreme Court of India, upheld the doctrine.

Doctrine of Presumptive Validity: The reiterations of the Doctrine of Presumptive Validity may be competently summarized by meticulously analysing the provisions of Article II(1) of the New York Convention. It reads, that each state, who is a party to the latter, shall recognize an arbitration agreement, provided it is made in writing, wherein the parties agree to submit all or any of their disputes to the arbitration. It is necessary herein however, that the differences must have arisen between the parties to form a legal relationship, irrespective as to whether or not such a relationship is contract in nature or not.

Furthermore, the municipal courts ought to refer the parties concerning the dispute to an arbitrator tribunal unless and until the underlying agreement is found to be inoperative or incapable of being performed. Such a doctrine upholds its validity in many jurisdictions apart from India. For example, the United States Federal Arbitration Act, reiterates this doctrine. The French Code of Civil Procedure, China, Korea, Swiss Law on Private International Law, amongst many other developed jurisdictions are cognizant of this doctrine.

Most paramountly, in the landmark judgment of Scherk v. Alberto-Culver Co. [11], it was meticulously held by the Apex Court in the United States, that an arbitration agreement must

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and shall be honoured, respected and ultimately enforced by the municipal courts in the nation. An arbitration agreement thereby was held to be valid, irrevocable and enforceable.

The Nexus of Statutory and Judicial Pronouncements

Recent court decisions regarding Section 34 of the Arbitration and Conciliation Act 1996, emphasize that courts possess limited authority to intervene in arbitral awards and are restricted from adjudicating matters concerning contract interpretation, fact determination, errors in legal application, or reassessment of evidence. The arbitrator is considered the primary authority for interpreting contracts, assessing facts, evaluating evidence, and applying relevant laws. The extent of the court's jurisdiction, as outlined in Section 34 of the Act, is not appellate in nature; rather, it is aimed at ensuring that arbitral awards are not arbitrary, blatantly illegal, contrary to public policy, or tainted by fraud, bias, or corruption.

In the case of Dyna Technologies Pvt. Ltd. vs. Crompton Greaves Ltd. [12], the esteemed Supreme Court emphasized that courts must refrain from casually and recklessly interfering with arbitral awards. Such interference is warranted only if the court determines that the award exhibits clear perversity or patent illegality that goes to the core of the matter and leaves no room for alternative interpretations that could support the award. It is crucial to understand that Section 34 operates differently and cannot be likened to typical appellate jurisdiction. The essence of Section 34 is to uphold the finality of arbitral awards and the parties' autonomy to resolve their disputes through alternative means. If courts were to routinely intervene in arbitral awards based on factual considerations, it would undermine the rationale behind opting for alternative dispute resolution, thereby defeating its commercial purpose.

The restriction delineated by Section 34 of the Act, concerning the extent to which courts can intervene with arbitral awards, was additionally underscored by the esteemed Supreme Court in the case of McDermott International Inc. v. Burn Standard Co. Ltd. & Ors [13-14] whilst basing such a rationale on a former judgment of State of UP v. Allied Construction (2003).

Jurisprudence on the interpretation of arbitral agreements is further denoted by the case of Associate Builders vs. Delhi Development Authority The Supreme Court highlighted that arbitral tribunals should interpret contracts based on their terms. Even if an arbitrator interprets a contract term, unknowingly, as reasonable and prudent, it doesn't warrant setting aside the award unless the interpretation is so unreasonable that no sensible person could make it. Arbitrators are chosen by the parties, and courts can only interfere with their awards on limited grounds. Courts shouldn't act as the first appellate authority for assessing evidence. Setting aside an award on public policy grounds requires that the award deeply offends the court's sense of justice, rather than just being perceived as unjust.

In the case of Union of India & Anr. vs. M/s Annavaram Concrete Pvt. Ltd The Delhi High Court emphasized that when it comes to interpreting a contract, the arbitrator's ruling can only be challenged under Section 34 of the Act if it is clearly arbitrary or unreasonable.

In Steel Authority of India Ltd. v. Gupta Brother Steel Tubes18 Ltd. [15], the Supreme Court emphasized that an error made by the Arbitrator concerning the interpretation of a contract falls within the Arbitrator's jurisdiction and does not constitute an error on the face of the award [16-20]. The Court reiterated that such errors cannot be corrected by the Courts [21-32]. Additionally, it was affirmed that the Arbitrator, being the ultimate arbiter in resolving disputes between parties, cannot have their award challenged merely because they arrived at a conclusion deemed incorrect. This indicates the pedestal position granted to arbitrators across the nation, so far as their interpretations to arbitral agreements, and consequent awards are concerned.

Conclusion

Arbitration clauses have become a cornerstone of commercial agreements, offering a streamlined and effective means of resolving disputes outside the traditional court system. These clauses stipulate that any disagreements arising from the contract will be settled through arbitration, a private and confidential process where an impartial arbitrator or panel renders a binding decision. One of the key advantages of arbitration clauses in commercial contracts is the flexibility they provide. Parties have the autonomy to tailor the arbitration process to suit their specific needs, including selecting the arbitrator, setting procedural rules, and choosing the language and location of the proceedings.

Moreover, arbitration offers businesses a faster and more efficient alternative to litigation. Unlike court proceedings, which can be subject to lengthy delays and procedural complexities, arbitration typically proceeds on a more expedited timeline. This expediency can be particularly advantageous for commercial entities seeking swift resolution to disputes, allowing them to minimize disruptions to their operations and avoid prolonged legal battles. Additionally, arbitration proceedings are often less formal than court proceedings, fostering a more collaborative atmosphere conducive to constructive dialogue and negotiation.

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Furthermore, arbitration clauses afford parties greater confidentiality and privacy. Unlike court hearings, which are generally open to the public, arbitration proceedings are private and confidential. This confidentiality can be especially valuable for businesses seeking to protect sensitive information or proprietary trade secrets. By keeping disputes out of the public eye, arbitration helps safeguard the reputations of the parties involved and preserves valuable business relationships. Overall, arbitration clauses offer commercial entities a flexible, efficient, and confidential means of resolving disputes, promoting greater certainty and stability in the realm of business transactions.

Having meticulously delved into the ocean of drafting and thereafter interpreting such arbitration clauses and/or agreements, of commercial nature, it becomes safe to circle back to the premier contention argued by this research paper; "At all events, arbitration is more rational, just, and humane than the resort to the sword" Rightly stated by Richard Cobden.

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