Arbitration agreement is in writing if contained in exchange of statement of claim and defence (Bombay High Court)

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Inspira IT Products Pvt. Ltd. v. Tata Consultancy Services Ltd.

Court: Bombay High Court| **Case number**: Commercial Arbitration Application No.147 Of 2019 | **Citation**: 2019 SCC OnLine Bom 2716 |**Bench**: G. S. Kulkarni J| **Date**: 14 October 2019

Section 7 of the Arbitration and Conciliation Act, 1996 ("**ACA**") deals with formal validity of the arbitration agreement. Sub-section 3 prescribes that the arbitration agreement "shall be in writing". Did parties have a written arbitration agreement? This was the question in the case in an interesting fact situation.

The arbitrator had been appointed by the court, with consent of the parties, while hearing a company petition. He resigned mid-way of the arbitral proceedings. When Inspira, the claimant in arbitration, filed an application for his substitution, Tata Consultancy used the opportunity to argue that there was no (written) arbitration agreement within the meaning of Section 7 of the ACA.

By this time, as the court noted: –

1. The statement of claim and defence had been filed.
2. Tata had filed an interim application for rejection of Inspira's claim on the ground of limitation.
3. Claimant Inspira had examined its witnesses who were cross examined by Tata.
4. The matter was at the stage where Tata filed an application for filing additional evidence.

The court concluded that Tata's argument was "not well founded" and it had "wholeheartedly accepted reference of the disputes to arbitration". It then held the requirement that arbitration agreement be written was fulfilled because: –

1. Under Section 4 (c) of the ACA, an arbitration agreement is in writing also if it is contained in an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

2. In its statement of claim, Inspira referred to the fact that the disputes were referred to arbitration by consent. Tata Consultancy did not (of course) take any specific objection.

   Kerala State Electricity Board v. *Kurien E. Kalathil,* 2018 4 SCC 793, cited by Tata, was distinguished because that was a case of counsel giving consent but the parties objecting later, unlike here where the parties participated in the arbitration.

   Tata's alternative argument that it no longer continued to give the consent was rejected as "wholly misconceived". The court ruled that once the arbitrator was appointed recognising the arbitration agreement, the substitute arbitrator would be required to be appointed in the same fashion. [citing to *Shailesh Dhairyawan* v. *Mohan Balkrishna Lulla*, (2016) 3 SCC 619]