

INSPIRA I.T. PRODUCTS PVT. LTD. V. TATA CONSULTANCY SERVICES LTD., 2019 SCC ONLINE BOM. 2716

Bombay High Court; single-judge bench, **G.S. Kulkarni J**; decided on 14 October 2019

An arbitration agreement is in writing if contained in an exchange of statement of claim and defense

Section 7 ACA deals with the 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 present case in an interesting fact situation.

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

By this time, as the court noted: –

- (i) The statement of claim and defense had been filed.
- (ii) Tata had filed an interim application for rejection of Inspira’s claim on the ground of limitation.
- (iii) Claimant Inspira had examined its witnesses who were cross-examined by Tata.
- (iv) The matter was at the stage where Tata applied 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: –

- (i) Under Section 4 (c) ACA, an arbitration agreement is in writing also if it is contained in an exchange of statements of claim and defense in

which the existence of the agreement is alleged by one party and not denied by the other.

- (ii) 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 after recognizing the arbitration agreement, once the arbitrator was appointed, 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].