

# Formal Contract Signature Not Required To Enforce Arbitration Clause If Parties Are Ad Idem: Madras High Court

Rajesh Kumar

31 July 2024 2:44 PM



The **Madras High Court** division bench of **Justice Krishnan Ramasamy** has held that if it is proved that if it is established that the parties are ad idem, a formal contract signature by the other party is not necessary to enforce the arbitration agreement.

Further, the bench held that by acting upon the Purchase Orders, the party implicitly accepted the terms, including the arbitration clause contained in the GCC.

## **Brief Facts:**

Larsen & Toubro Limited (Petitioner) issued Letters of Intent to M/s. Texmo Pipes and Products Limited (Respondent) for supplying High Density Polyethylene Pipes for its projects. Following these Letters of Intent, the Petitioner issued 22 Purchase Orders on various dates. Each Purchase Order referred the "General Conditions of Contract for procurement of Materials/Equipment" (GCC) stating that the Purchase

Order would be governed by the GCC unless specified otherwise. The Petitioner contended that this indicated the Purchase Orders were issued in alignment with the GCC which made GCC applicable to these orders.

A dispute arose concerning the quality of the pipes supplied. The Petitioner claimed damages amounting to Rs.116.33 Crores and communicated these claims via a letter. The Respondent countered with a legal notice and presented three counterclaims related to termination payments, alleged outstanding dues, and damages. The Petitioner invoked Clause 28 of the GCC and sought an amicable resolution and proposed arbitration. Despite settlement talks, no agreement was reached. The Respondent declined to mutually appoint an Arbitrator and suggested appointing one under Section 11(6) of the Arbitration and Conciliation Act, 1996. The Petitioner responded with a notice of arbitration under Section 21 of the Arbitration Act and proposed a panel of arbitrators. The Respondent insisted on an independent arbitrator and continued to deny the GCC's applicability. Thereafter, the Petitioner approached the High Court for appointment of an arbitrator under Section 11(6) of the Arbitration Act.

### **Contentions of the Parties:**

The Petitioner argued that the GCC governed the Purchase Orders due to the reference in the Purchase Orders and that the Respondent acted under the Purchase Orders without disputing this clause. The Petitioner contended that Clause 28.2 of the GCC provided for arbitration and that the Respondent's acceptance of Letters of Intent and action upon the Purchase Orders, including downloading and acting on the GCC, implied agreement to arbitration.

Conversely, the Respondent argued that the GCC, including its arbitration clause, was not binding as it was never signed by the Respondent, and there was no specific reference to it in the Purchase Orders themselves.

### **Observations by the High Court:**

The High Court noted that, to establish an arbitration agreement, there must be mutual consent between the parties. Section 7(4)(b) of the Arbitration Act allows an arbitration agreement to be derived from various forms of communication, including electronic means, as amended by the 2015 Amendment Act. This provision states that even without a formal contract, if parties are found to be ad idem, they cannot avoid liability under the agreement.

The High Court emphasized the importance of the parties' intentions in determining the existence of an arbitration agreement. It held that arbitration is fundamentally consensual and its enforcement relies on the parties' agreement to settle disputes through this mechanism.

The High Court noted that both parties engaged in six Letters of Intent concerning the supply of HDPE pipes which stated that a formal Purchase Order with detailed terms would follow. The Purchase Orders issued subsequently included a clause indicating that they would be governed by the GCC. The Respondent acknowledged receipt of these Purchase Orders and subsequently raised Invoices referring to the Purchase Orders. The High Court noted that this exchange demonstrated that the Respondent implicitly accepted the terms, including the arbitration clause within the GCC, by acting upon the Purchase Orders.

Despite the Respondent's attempt to dispute the existence of the GCC, the High Court found this argument unconvincing. The Purchase Orders, containing explicit reference to the GCC, established the terms of the agreement including the arbitration clause. The High Court observed that the Respondent's failure to raise any objections or seek clarifications as per the terms of the Purchase Orders indicated its acceptance of these terms.

The High Court referred to the decision of the Supreme Court in **Mahanagar Telephone Nigam Limited v. Canara Bank and Others** (2020) 12 SCC 767 where it was held that a valid arbitration agreement is crucial for the arbitral process. The essence of an arbitration agreement is that it must be a written agreement wherein parties agree to submit their disputes to arbitration. Section 7 of the Arbitration Act defines an

arbitration agreement and specifies that it can take various forms including a clause within a contract or a separate written agreement. It must be in writing, which can include a signed document, exchanges of communication, or a record in the form of letters or telegrams.

The High Court held that the arbitration agreement does not need to adhere to any specific format. Instead, what matters is the intention of the parties to resolve their disputes through arbitration. This intention can be inferred from the terms of the agreement, conduct, and correspondence exchanged between the parties. It noted that ***if it is apparent that the parties were ad idem—meaning they were in agreement on all material terms—a binding arbitration agreement is established.***

Despite the Respondent's denial of the formal arbitration agreement, the High Court noted that the Respondent acknowledged the existence of a dispute and expressed no objection to resolving it through an independent arbitrator appointed by the High Court. The High Court noted that while the Respondent questioned the jurisdiction of the High Court, it didn't raise this issue consistently in correspondence. Instead, the Respondent recommended the appointment of an Arbitrator under Section 11(6).

The High Court referred to **Enercon (India) Ltd. v. Enercon GmbH** (2014) 3 SCC (Civ) 59 where it was held that if the documents reveal a mutual agreement on all essential terms, it constitutes a binding contract. Therefore, the High Court held that the evidence demonstrated a meeting of minds between the parties regarding the terms of the Purchase Orders and the GCC, which included the arbitration clause.

Consequently, it ordered the appointment of Justice Sanjay V. Gangapurwala, a former Chief Justice, as the sole Arbitrator to adjudicate the disputes between the parties.

**Case Title:** Larsen & Toubro Limited vs M/s. Texmo Pipes and Products Limited

**Case Number:** Arb.O.P (Com.Div.) No.191 of 2024

**Advocate for the Petitioner:** Mr. Anirudh Krishnan assisted by Mr. Ramkishore Karanam Ms. Rupikaa Srinivasan and Ms. Samriddhi Sanga.

**Advocate for the Respondent:** Mr. Arun C. Mohan asst. by Mr. Advaidh Neelakantan and Mr. Avanti Balachander.

**Date of Judgment:** 29.07.2024

Click Here To Read/Download Order or Judgment ([https://www.livelaw.in/pdf\\_upload/larsen-toubro-limited-vs-mstexmo-pipes-and-products-limited-552587.pdf](https://www.livelaw.in/pdf_upload/larsen-toubro-limited-vs-mstexmo-pipes-and-products-limited-552587.pdf))