



Arbitrability of Trust Disputes

The Indian Supreme Court, by a recent judgment, has totally ostracized 'Arbitration' from the world of 'Trust Disputes'. Though the reasoning of the Supreme Court is prima facie appealing, a closer scrutiny of its judgment may lead one to think that it is retrograde. Vimal Kishor Shah & others Vs. Jayesh Dinesh Shah and others (Civil Appeal no. 8164 of 2016) [\[1\]](#) is the case where the Supreme Court held that trust disputes are not arbitrable. That was a case where a private trust was settled by a father in favour of his children. A clause in the trust deed provided that all disputes arising between the trustees and beneficiaries or beneficiaries inter se shall be resolved by way of Arbitration in accordance with the Arbitration law in force. Eventually, some disputes arose between the beneficiaries and upon the application of one set of beneficiaries, the High Court of Bombay appointed an Arbitrator. But, the Supreme Court reversed the order of the Bombay High Court and held that trust disputes are alien to the realm of Arbitration.

The decision of the Court is based on two reasons. Firstly, they held that the beneficiaries are not parties to any Arbitration Agreement as defined by S.7 of the Arbitration and Conciliation Act, 1996. It was held that a trust deed is not an agreement to which the beneficiaries are parties and therefore there is no Arbitration Agreement amongst them. S.7

of the Arbitration and Conciliation Act reads as follows:-

"7. Arbitration agreement.- (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in (a) a document signed by the parties; (b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or (c) 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.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

In order to constitute an agreement under the above provision of law it shall be in writing. But, an agreement in writing is inferred under various circumstances mentioned under sub section 4. Thus, if it can be shown from the letters, telegrams etc exchanged by parties that there existed an agreement or if one party fails to deny the existence of arbitration agreement in some correspondence containing claims and defences, an agreement under S.7 is presumed to be in existence. If that is so, what shall be the inference to be drawn when the beneficiaries accept the trust deed as a whole and act accordingly. By accepting the benefit of the trust they accept all the terms and conditions settled by the author of the trust. Trustees also, by assuming the position of

trustees, accept all the terms and conditions of the trust. So, by subscribing to the trust deed both the trustees and the beneficiaries agree to the terms of the Trust Deed and it becomes an agreement amongst themselves.

The Indian Trusts Act, 1882 enables a beneficiary to renounce his interest under the Trust by a disclaimer addressed to the Trustee or by setting up a claim inconsistent therewith. Without availing the right to renounce the benefit under the Trust, when a beneficiary accepts the Trust he impliedly subscribes to all the terms and conditions laid down in the trust deed. The Trusts Act empowers trustees also not to accept the Trust. But, by accepting the Trust he accepts the Trust as a whole. There cannot be any partial acceptance. So, both the Trustees and the Beneficiaries, by accepting the Trust bind themselves with the terms and conditions laid down by the Trust Deed. Thus, an agreement arises amongst them to go by the trust deed and if the said deed contains an arbitration clause it is an Arbitration Agreement as provided by law. However, the Supreme Court approached the question in a technical manner and held that the trust deed cannot be considered as an agreement amongst trustees or beneficiaries.

The Supreme Court could have adopted a finer rule of statutory interpretation and could have held that beneficiaries and trustees having accepted the trust come to an implied agreement to abide by the trust deed and are therefore parties to an arbitration agreement. If such an interpretation is considered to be not possible in the wake of a literal interpretation of S.7 the matter could have been left to the legislature which by a slight alteration of S.7, could have included trust disputes within the province of arbitration.

But, the Supreme Court went further and held that the Indian Trusts Act is a complete code in itself and all disputes relating to trusts shall only be resolved in accordance with the scheme contained in the said Act. This was the second

reason for allowing the appeal by the Supreme Court. If this reasoning of the Supreme Court is accepted no contractual matter can be subjected to arbitration as the Indian Contract Act and the Specific Relief Act are comprehensive legislations in relation to contracts and remedies for breach of contracts. The Trusts Act only lays down as to how a trust can be created, who can create it and as to what are the rights and obligations of trustees and beneficiaries generally. At one or two places the Act mentions the right of a Trustee to approach a civil court for its opinion on any issue involved in the administration of the trust or the right of a beneficiary to approach the court. Those provisions are not capable enough to assume that there is a total exclusion of other dispute resolution methods, especially when one considers the fact that the Trust Act came into existence in the year 1882 at a time when the concept of Arbitration was in its infancy.

In England, I understand that the Trust Law Committee has suggested amendments to the relevant law for making trust disputes arbitrable. In the United States though there is a conflict among the laws of various states as to the arbitrability of trust disputes the trend of the Courts is to uphold arbitration clauses in trust deeds. I may conclude by stating that the Courts cannot ignore the large and growing role of trusts in international economy as they hold huge amount of wealth and generate huge amount of money as income. There is no reason why such an institution is denied one of the most effective methods of alternate dispute resolution.

[1] <https://indiankanoon.org/doc/41329464/>