

**USE OF WORDS “EVERY EFFORT TO ARBITRATE” CONSTITUTES A VALID ARBITRATION CLAUSE:
MANIKA SETT v SETT IRON FOUNDRY & ORS^[1]**

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The Calcutta High Court has held that a contractual clause stipulating that parties should make “every effort” to arbitrate constitutes a valid arbitration clause.

Brief Facts

The Petitioner, one of the partners in a partnership firm, expressed her intention to retire. In order to settle the disputes arising out of her retirement, the Petitioner issued an arbitration notice to the other partners under Clause 18 of the Partnership Deed, which stipulated that:

*“In the event of any dispute arising between the partners, in the conduct of the business or as to the interpretation, operation or enforcement of the terms of the partnership deed, such partner shall be free to seek interference of the Court for remedy **although every effort should be made by the partners to settle the dispute by arbitration.**”*

The other partners denied the existence of an obligatory arbitration mechanism under the Partnership Deed. The Petitioner accordingly approached the Calcutta High Court for the appointment of an arbitrator.

Contentions

The Petitioner contended that the clause conveyed an intention to arbitrate and all questions pertaining to the validity and existence of the arbitration clause must be determined by the arbitrator.

The continuing partners contended that the clause in question was an agreement to settle any dispute by discussion, rather than by arbitration, before approaching court.

¹ Judgment dated 28 July passed by Calcutta High Court in Arbitration Petition No. 80 of 2020

Decision

The Court validated the clause as an arbitration clause on the basis that the words “*although every effort should be made by the partners to settle the dispute by arbitration*” should be interpreted liberally so as to give effect to the parties’ intention to arbitrate. The Court relied on an English decision² to hold that the words “*every effort*” amounted to a best-efforts clause, which requires a party to take all reasonable steps. The Court further observed that even vague and unclear arbitration clauses can be considered valid as long as the intention to refer the parties to arbitration is clear³.

The Court also rejected the contention that the clause contemplated resolution of disputes by mutual settlement on the basis that that such an interpretation would amount to a re-writing of the Partnership Deed.

Conclusion

An arbitration clause should be liberally interpreted to see if there is an intention to arbitrate.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

For further information on this topic please contact Tuli & Co

T +91 120 693 4000, F +91 120 693 4001 or email lawyers@tuli.co.in

www.tuli.co.in

Author(s)



Arjun Masters

Managing Associate



Nabeel Malik

Associate

² *Rhodia Int’l Holdings Ltd. & Rhodia UK Ltd. v Huntsman Int’l LLC* (2007) EWHC 292 (Comm)

³ *Zhejiang Bonly Elevator Guide Rail Manufacture Co. Ltd. v Jade Elevator Components* (2018) SCC Online SC 1503