

CLAUSE STIPULATING THAT PARTIES "MAY BE REFERRED TO ARBITRATION" IS NOT A BINDING ARBITRATION AGREEMENT - GTL INFRASTRUCTURE v VODAFONE INDIA LTD

5 April 2023



The Bombay High Court has held that a clause which contains the words “*may be referred to arbitration*” takes away from the mandatory and binding nature of an arbitration agreement.

Facts

GTL and Vodafone entered into a Master Services Agreement (MSA) on 15 November 2007. Disputes arose between them in relation to contractual dues under the MSA. GTL invoked arbitration against Vodafone and approached the Bombay High Court for interim relief and for the appointment of an arbitrator.

Bombay High Court

The Court relied on precedent^[1] to hold that, as the arbitration clause contained words such as “*may*” and “*if mutually agreed upon by the parties*”, it indicated that the parties did not intend a binding arbitration agreement. Such language contemplated future consent between the parties prior to a dispute being referred to arbitration and offered an option to a party not to arbitrate.

¹ [Babanrao Rajaram Pund v Samarth Builders and Developers & Anr](#) (2022) 9 SCC 691; [Jaqdish Chander v Ramesh Chander & Ors](#) (2007) 5 SCC 719; [Wellington Associates Ltd v Kirit Mehta](#) (2000) 4 SCC 272; [Quick Heal Technologies Ltd. v NCS Computech Pvt.Ltd & Anr](#), 2020 SCC Online Bom 687

The Court went on to say that correspondence exchanged between the parties or argument raised before the Court after the dispute had arisen is of no consequence if the arbitration clause does not make arbitration mandatory.

Conclusion

An arbitration agreement can be considered valid and binding only if there is a specific and direct expression of intent to have disputes settled by arbitration.

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

Tel +91 120 693 4000, Fax +91 120 693 4001 or Email lawyers@tuli.co.in

www.tuli.co.in

Author(s)



Arjun Masters

Partner



Ankita Mishra

Senior Associate