Business Dispute Resolution: Taking Arbitration Clause Seriously

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Abstract

Dispute resolution through arbitration is the chosen method for businesses, however, it has often been experienced that due to a poorly drafted arbitration clause in the main contract or in a separate contract, there is no effective arbitration between the parties and there is a new dispute regarding the existence of the arbitration clause, which has to be resolved at the preliminary stage so as to enable the parties to take part in arbitration proceedings or go ahead with litigation in the public courts. The possibility of a decision regarding the interpretation of arbitration clause be appealed in a higher court depends on the nature of parties and the amount at stake. Litigious parties, not willing to budge even a little, have no qualms in fighting it out till the highest court. And, in this process the original dispute takes a back seat. The paper examines some of the interesting disputes regarding the arbitration clause, which were decided by courts, and could have easily been avoided had the parties been cautious at the time of entering into the contract. The paper also provides suggestions for some common and avoidable problems to help businesses save time, effort and money which otherwise get wasted in getting the dispute resolution clause interpreted in the courts.

KEYWORDS:

Arbitration, Business, Contracts, Courts, Dispute resolution clause, Jurisdiction

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INTRODUCTION

Would any couple talk about the specific conditions of divorce at the time of engagement? Obviously, the answer is no. The same, however, is not true about businesses. At the time of entering into a contract, prudent business parties are not only thinking about the performance of contract, but also about the resolution of disputes, in case a dispute arises at a later date. The firm of the future would not like to live in uncertainty and would prefer to nip in the bud any dispute which arises. Still better, it would prefer to avoid any disputes, so that there is no need of any resolution of disputes. The word 'dispute' itself connotes negative meaning, and any firm – particularly the firm of the future – would not like to waste its time, effort, and money on dispute resolution. Thus, it becomes extremely important for such a firm to think well in advance about the dispute resolution clause while drafting a contract for business.

It becomes critical in case it is an international contract, involving laws of two or more countries. Most of the business contracts, of late, prefer an arbitration clause for resolution of disputes. Noted Indian jurist and lawyer Nani A. Palkhivala had expressed his views about the international commercial arbitration in the following words:

> *"…when the International Chamber of Commerce at Paris started offering the services of its Court of Arbitration, businessmen in different countries found it convenient to avail themselves of that facility. In course of time that 'convenience' became a 'preference' and the preference has now ripened into a necessity. … If I were appointed the dictator of a country, in the short period between my appointment and my assassination I would definitely impose a law making international arbitration compulsory in all international commercial contracts…."*[1]

Such are the advantages of international commercial arbitration, however, the arbitration clause has to be taken seriously. Any firm which accepts such a clause mechanically, without paying due attention, usually finds itself at the receiving end.

THE MODEL LAW, THE 1996 ACT, AND THE ARBITRATION AGREEMENT

The United Nations Commission on International Trade Law (UNCITRAL) produced the final draft of a Model Law on international commercial arbitration in 1985. This law was recommended by the General Assembly of the UN on December 11, 1985, to all member states. India, in furtherance of this recommendation, enacted The Arbitration and Conciliation Act, 1996, and repealed the then existing law on arbitration, The Arbitration Act, 1940.

Section 7 of the 1996 act defines arbitration agreement and lays emphasis on the fact that any arbitration agreement must be in writing. This is clearly a deviation from the well-established contract law in India, which recognises an oral agreement to be as good as a written agreement. While mentioning that the arbitration agreement should be in writing, the section gives it a broad interpretation and includes even exchange of letters, telegrams, etc. The basic purpose has been to reduce the disputes regarding the existence of an arbitration clause itself. The section is as follows:

[1] Palkhivala, Nani A., 1994 "We, The Nation: The Lost Decades", UBS Publishers' Distributors Ltd., New Delhi, 1994, pp. 205, 209.

> ***"Section 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."*

Conflicting Clauses

Practically, clauses in any contract must be plain, simple and fully convey the intention of both the parties. At times, this does not happen and clauses in the contract, *prima facie*, are conflicting or contradictory.

Some of the cases illustrate the point well.

(1) Coal India versus CCC

In a case decided by the Calcutta High Court last year – *Coal India versus CCC*[2] – the dispute resolution clause created the confusion regarding the country whose law would be applicable. The matter pertained to a contract between Coal India Ltd, an Indian public sector undertaking and Canadian Commercial Corporation, a Canadian public sector organisation, for developing and managing opencast Rajmahal coal mine in the state of Jharkhand. The clauses as cited in the judgement were as follows:

> *"**Clause 32. Governing Law***
>
> *This Contract shall be subject to and governed by the laws in force in India.*
> *...*
>
> ***Clause 34.0 Disputes***
>
> *34.1 The Parties mutually agree that in the event of a dispute of any nature whatsoever, related directly or indirectly to this Contract, they shall use every means at their disposal to settle said disputes on an amicable basis.*

[2] Coal India Limited v Canadian Commercial Corporation, Calcutta High Court, 15 January 2013, 2013 Indlaw CAL 20

> *34.2 Should the Parties fail to reach an agreement within thirty (30) days after the dispute arises or any such greater period as may be mutually agreed upon the dispute may be submitted by either party to arbitration for final settlement under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, Paris, France, by one or more arbitrators appointed in accordance with the Rules.*
> *34.3 Said arbitration shall be held in Geneva, Switzerland and be conducted in the English Language.*
> *34.4 The Parties mutually agree that if the decision rendered as a result of the aforementioned conciliation or arbitration involves the payment of compensation, the amount of such compensation shall be expressed and payable in Dollars.*
> *34.5 Both Parties shall make endeavours not to delay the arbitration proceedings. The decision of the arbitrator(s) shall be final and binding on both the parties. Enforcement thereof may be entered in any court having jurisdiction."*

The problem arose as to which law would be applicable after the arbitral tribunal had given its award – Indian, French, Swiss, or English as some of the sittings were also held in England. The Indian party, Coal India, insisted that Indian law would apply and courts in India had the jurisdiction. On the other hand, CCC argued that courts in India did not have any jurisdiction, and this was, interestingly, decided by the Calcutta High Court, which held:

> *"…Indian law, although specified in Clause 32, would have no bearing in the field of arbitration…. In any event, Indian Court could not have any role to play at all, firstly, as the parties agreed to exclude it that we find on a combined reading of Clause 34, secondly, the law of arbitration being silent, the venue would be the guiding force that would be abroad and thirdly, the arbitration was between an Indian party and a foreign party, having not specifically agreed to be bound by the Indian arbitration law."*

This problem could have been avoided by proper drafting of the clauses, leaving no doubt regarding the jurisdiction of courts and the law governing the arbitration also.

(2) NNR versus Aargus

In another case, *NNR versus Aargus*[3], the Delhi High Court decided in favour of interpretation of clauses as suggested by the foreign company. Aargus was an Indian freight and cargo company. It entered into a contract with a Chinese company named NNR, which itself was a joint venture between a Japanese company NNR Global Logistics and another Chinese company, Shanghai YUD International Forwarding Co. Ltd., for acting as each other's agent in the business of international freight and cargo. The contract contained an arbitration clause which provided that ICC Paris rules would be followed, however, the parties did not mention anything about the place of arbitration. The clause was as follows:

> *"Arbitration: In case any dispute arises in connection with this agreement, both parties shall make their best efforts to settle it amicably. However, if said efforts have been exhausted such disputes shall be finally settled under the rules of conciliation and arbitration of the International Chambers of Commerce."*

[3] NNR Global Logistics (Shanghai) Company Limited and another vs. Aargus Global Logistics Private Limited and another, Delhi High Court, 4 October 2012, 2012 Indlaw DEL 2087

Later, a dispute arose and NNR suggested Kuala Lumpur in Malaysia as the venue of arbitration. It was objected to by the Indian company Aargus, however, subsequently ICC Paris fixed the seat of arbitration at Kuala Lumpur. Arbitration proceedings, therefore took place at Kuala Lumpur, and the arbitrator allowed NNR's claims. Earlier, NNR had written a letter to Aargus, and as cited in the judgment, the relevant portion is as follows:

> *"In view of the fact that the closest connection of the Agreement is with India, Indian law may be applied as the substantive law of the Agreement and the arbitration may be held in the English language. However, the arbitration agreement itself would be exclusively governed by the laws of Malaysia."*

Aargus challenged the award in the Delhi High Court and the short question for consideration for the High Court was whether it had any jurisdiction to hear the matter or not. Based on the changed law in the country, after the Balco[4] decision, pronounced by a Constitutional Bench of the Supreme Court on September 6, 2012, the Delhi High Court had no doubt that it did not have any jurisdiction to hear the matter as the parties had, expressly or impliedly, agreed to the jurisdiction of Malaysian courts once the award had been made. The High Court cited the relevant portion from the Balco judgement,

> *"…the legal position that emerges from a conspectus of all the decisions, seems to be that the choice of another country as the seat of arbitration inevitably imports an acceptance that the law of that country relating to the conduct and supervision of arbitrations will apply to the proceedings."*

Had the parties been more aware and cautious and provided the details regarding the venue of arbitration in the dispute resolution clause itself, there would have been no reason to file a petition in the Delhi High Court, and the parties could have saved themselves from something they never wanted to do – to go to a court of law.

(3) Gujarat NRE Coke Ltd. versus Gregarious Estates Incorporated

Gujarat NRE (Natural Resources Environment) Coke Ltd, an Indian company, entered into a Charter Party Agreement – in simple words, a Charter Party Agreement is a contract between the owner of a vessel and the charterer for using the vessel – with Gregarious Estates Incorporated, a Singaporean shipping company in 2008. The shipping company was supposed to make the vessel available at Dalian shipyard in China. According to Gujarat NRE, the agreement was signed in Kolkata - this fact itself would have given jurisdiction to the Calcutta High Court – however, records later showed that the contract was concluded in London. Gujarat NRE had entered into the contract with the shipping company to bring coal from foreign countries to India for consumption in its power plants at different places. Interestingly, all those places where outside the jurisdiction of the Calcutta High Court. The Charter party contained a dispute resolution clause, which was as follows:

> *"Cl. 84 - Arbitration General Average/Arbitration in London and English Law to apply. Latest BIMCO/LMAA Arbitration Clause to apply with US $100,000 for Small Claims Procedure. Dispute Resolution Clause English Law, London Arbitration*

[4] Bharat Aluminium Company Limited (BALCO) and others vs Kaiser Aluminium Technical Service, Incorporate and others, Supreme Court of India, 6 September 2012, 2012 Indlaw SC 297

> *(a) This contract shall be governed by and construed in accordance with English Law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The Arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA). Terms current at the time when the arbitration proceedings are commenced."*[5]

It needs to be noted that the Arbitration Act 1996 referred to in the above-mentioned clause is not the same as that of the 1996 act of Indian law. The Indian law on the same subject is titled the "Arbitration and Conciliation Act, 1996," whereas the English law is titled as the "Arbitration Act, 1996." Hence, it is quite clear from the clause in the Charter party agreement that the reference was to the English Law, and not to the Indian law.

Disputes arose between the parties and Gujarat NRE filed a case in Kolkata courts to restrain the other party from initiating arbitration proceedings, and if already started, a stay on the proceedings, whereas Gregarious Estates filed a case in London courts and also started arbitration proceedings in London. The lower court in Kolkata observed that it did not have competence, due to lack of jurisdiction, to hear the matter and hence denied passing any order restraining arbitration. Against this order, Gujarat NRE filed an appeal in the Calcutta High Court.

It was argued by the shipping company's lawyers that when the parties had entered into the arbitration agreement and decided to have any disputes resolved in London, it would have been very clear between the parties that the seat of arbitration was specified as London, the applicable law was specified as English Law, and the procedure to be followed for resolution of disputes was the London Maritime arbitration procedure. After agreeing to these details, the parties were not at freedom to resile, and as the dispute resolution, according to the parties, was envisaged to take place in London, Indian courts had no jurisdiction over the dispute and as to how the arbitration was conducted. In other words, it was simply a case when the parties had excluded the jurisdiction of the Indian courts, and accepted the jurisdiction of the English courts in furtherance of the arbitration to be conducted in London. Ignoring these clauses and insisting on the matter to be heard in an Indian court – the Calcutta High Court – Gujarat NRE was unnecessarily trying to interfere with the arbitral proceedings in London, and any other legal proceedings associated with said arbitration in London. Party autonomy is sacrosanct in arbitration matters, however, any party is not free to do anything contrary to the provisions of the contract. In any case, provisions of the arbitration agreement could not be ignored.

The counsel for Gujarat NRE Coke made the argument, quite surprisingly, that Indian courts were free despite the existence of an arbitration clause providing arbitration in London, to examine the matter on two grounds: convenience and cost. Thus, the lawyer argued that it would neither be convenient nor cost-effective for the Indian party to go to London to contest both the arbitration and the suit in the English court, and for this reason the matter fell within the jurisdiction of the Indian courts, particularly the Calcutta High Court, and it was a bounden duty of the court to decide the matter.

[5] Gujarat NRE Coke Limited and another v Gregarious Estates Incorporated and others, Calcutta High Court, 22 January 2013, 2013 Indlaw CAL 37

The Calcutta High Court did not agree with the contention of the lawyer for Gujarat NRE and decided on the basis of the dispute resolution clause in the contract itself, which excluded the jurisdiction of Indian courts as far as arbitration and related matters were concerned.

The clause, read as a whole, does not appear to be ambiguous, and it can be said to be simple stubbornness on the part of one party to file a petition in the court and clogging courts' dockets. It is, however, neither for the first time, nor for the last time that such a matter has been raised in the court. It depends on the courts as to how they treat a dispute resolution clause and how they dispose of the matter.

(4) Wellington Associates versus Kirit Mehta

In the case of *Wellington Associates versus Kirit Mehta*[6], the Supreme Court of India in 2000 faced the problem of interpreting the dispute resolution clause. Wellington Associates was a company registered in Port Louis, Republic of Mauritius. In 1995, it entered into a contract with Kirit Mehta, promoter and Managing Director of an Indian company, CMM Ltd. Mumbai for dealing in equity shares. While entering into the contract, the parties had agreed to the following dispute resolution clause:

> *"Clause 4: It is hereby agreed that, if any dispute arises in connection with these presents, only Courts in Bombay would have jurisdiction to try and determine the suit and the parties hereto submit themselves to the exclusive jurisdiction of the Courts in Bombay.*
>
> *Clause 5: It is also agreed by and between the parties that any dispute or differences arising in connection with these presents may be referred to arbitration in pursuance of the Arbitration Act, 1947 (sic), by each party appointing one arbitrator and the arbitrators so appointed selecting an umpire. The venue of arbitration shall be at Bombay."*

The clauses, as is obvious, did not give a clear indication as to what the intention of the parties was. Whether the parties wanted the disputes to be resolved in courts or did they want the matter to be resolved through arbitration, was not at all clear. In case any of the clauses are ambiguous, typically one party would like to go ahead with one meaning, whereas other party would prefer to stick to the other meaning. The same happened in this case. When a dispute arose between the parties, Wellington Associates invoked arbitration clause and appointed their arbitrator, however, Kirit Mehta denied the arbitration clause and said that the jurisdiction was with the courts in Bombay and the matter could not be referred to arbitration by relying on the words used in clause 5 – *may be referred* – and argued that *'may be'* meant that it was not at all mandatory to refer the matter to arbitration, however, it was simply a suggestion and provided a choice to the parties. On the contrary, Wellington Associates argued that *'may be'* had to be interpreted as *'shall'*, because once the parties had entered into a contract providing a dispute resolution clause with arbitration as the mechanism for resolving disputes, it was a mandatory clause and with that clause the parties had agreed to exclude the jurisdiction of courts.

[6] Wellington Associates Limited v. Kirit Mehta, Supreme Court of India, April 4, 2000, 2000 Indlaw SC 2668: AIR 2000 SC 1379

On this point alone, the matter reached the Supreme Court, which decided in favour of Mehta and said that in case contradictory provisions existed in any dispute resolution clause in a contract, it was not possible to understand the real intention of the parties and hence the parties were at liberty to invoke arbitration or not.

These contradictory provisions in the contract nullified the existence of any dispute resolution clause and the parties were back to square one. The parties to any contract are always free to refer any dispute to arbitration, if they had not decided to do that before the dispute arose, and they are also free to file the case in the lowest court of competent jurisdiction if they don't want to take the matter to arbitration. However, in case the parties had decided to refer any matter to arbitration, the parties waive their freedom and become bound to get the dispute resolved through arbitration only.

(5) Enercon (India) versus Enercon GmbH[7]

In a case involving two wind energy companies – one German and one Indian – besides the original business dispute, there was a dispute between the parties regarding the dispute resolution clause itself. The German company insisted that there had been mutual communication through letters, e-mail and even text messages, which should all be interpreted to be leading to a concluded contract with the dispute resolution clause providing for arbitration in London. On the other hand, the Indian company was of the view and argued the same in the court that there had never been a concluded contract between the parties, and in the absence of a concluded contract, there was no question of an arbitration clause which the parties had agreed upon.

To get this issue resolved the parties filed several petitions – in the district court in Daman, in the Bombay High Court, in the Supreme Court of India, and also in courts in London. Finally, the matter was decided by the Supreme Court of India in February 2014, when the court held that it appeared that when the parties had decided to enter into business agreement in 1994, they had since been decided that the dispute shall be resolved through arbitration in London. And, therefore, the absence of a concluded contract after ten years of the initial contract – in 2004 – would not cast a shadow on the applicability of the dispute resolution clause agreed by the parties in the very beginning. But, it had been a very long legal journey for both the parties and the parties must have wasted huge sums of money, time and effort. All these resources could have been very well utilised by the parties for their business had the parties been a bit more cautious at the time of entering into the contract, and making it clear as to whether the arbitration clause would be applicable or not.

PROBLEMS AND SUGGESTIONS

(1) Undue Haste

One of the most commonly observed reasons for confusion in dispute resolution clause is the undue haste with which parties act at the time of entering into a business deal. As is normally seen, there is a tendency to pay utmost attention to the business details, however, legal aspects take a back seat and often dispute resolution clauses do not even find mention in the

[7] Enercon (India) Limited and others v. Enercon GMBH and another, as reported in 2014 Indlaw SC 92; JT 2014 (3) SC 49; 2014(2) SCALE 452; Supreme Court of India dated 14 February 2014

list of agenda items to be discussed between the parties at the time of negotiation. This is of utmost importance for businesspersons would not like to be embroiled in controversies in dispute is unnecessarily, particularly those dispute which can be easily avoided by being clear at the time of formation of contract. A little bit of circumspection at that time is of great value for the future relationship to be strong.

(2) Lack of Understanding

It has also been observed on a number of occasions that business parties do not have a very good or clear understanding regarding the dispute resolution procedure to be followed, particularly when they are entering into an international business contract. Lack of knowledge and understanding of the legal aspects, coupled with aversion for the legal issues makes it uncertain and unpredictable and if both the parties believe in 'ignorance is bliss', then, of course, they suffer whenever a dispute arises; and, at that time the party in a better bargaining power position is able to dominate, which precisely is contrary to the objective of a weaker party in a business contract at the time of formation of contract. One of the main purposes of entering into a contract is to strengthen the position of the weak party and provide legal ammunition in the form of enforceable clauses in the contract. It is, therefore, necessary that the parties themselves develop an understanding of the legal provisions, and if they are not in a position to do that, they should be willing to take the help of legal counsel at the earliest opportunity, preferably at the time of formation of the contract.

(3) The devil is in the detail

A closely related issue with 'lack of understanding' is the importance of going into the details of contract, particularly the dispute resolution clause mentioning arbitration. It is very often seen that if one of the parties is able to understand the skeletal structure of the contract and other clauses, there may be certain very important and critical words and phrases used in the clauses which may, along with punctuation marks, give an entirely different meaning to what the parties, specifically one of the parties, understood while entering into the contract. They should not be any disconnect with the understanding between the parties and what is written in the clause, and to ensure that there is no difference. It is essential for the parties to understand the details of the dispute resolution clause to the last word and the last punctuation mark. For this purpose the help of an able legal counsel is needed, and, therefore, for successful businesses – which in other words, also means successful dispute resolution and avoidance – a competent legal counsel act as the friend, philosopher and guide. The beauty of law is and its interpretation and a single line contract may suffice the purpose if the parties have clarity, however, in case the parties are not clear about it, extremely long contracts even with hundreds of pages may not serve the purpose.

(4) Too Vague or Too Precise

On many occasions, the dispute resolution clauses are found to be extremely vague with just a faint idea expressed in writing about how the parties intend to resolve the dispute. In case a dispute arises. Such a clause works very well when the parties have mutual trust and faith and are willing to resolve the dispute in an amicable manner with their best efforts, however, it has been experienced that whenever a dispute arises the parties are not willing to agree on anything, and the dispute resolution clause itself becomes the first victim. It is therefore important not to leave the dispute resolution clause too vague and at least specify some of the essential elements, such as the applicable law, jurisdiction of which court, institutional or ad-

hoc arbitration, seat of arbitration, number of arbitrators, language to be used, and a couple of other essential things which the parties can very well anticipated at the time of entering the contract. But, making the dispute resolution clause too precise also has its own problems. The major problem is that of tying the hands of the parties at the back and leaving them with almost no option and flexibility in making prudent choices at the time of resolving the dispute. It is very simple to understand that when a dispute arises, one party would like to continue delaying the resolution, whereas, the other party would like to hasten the process. A little bit of flexibility is definitely needed, and if the parties had made the resolution clause so precise that there is no room for flexibility, then things become absolutely rigid and it is difficult to make it work. Hence, a fine balance needs to be achieved and that depends on the discretion of the parties at the time of entering the contract.

(5) Unworkable

Besides the reason of the dispute resolution clause being either too vague or too precise, there are other reasons, which may make the resolution clause unworkable. The most notable reasons are nomination of an unsuitable person as arbitrator at the outset, or the parties being in agreement for the arbitral expenses at the time of entering the contract without understanding the implications. It is extremely important for the parties to understand at the time of the formation of contract that the clause must be realistic in nature and therefore the parties must make efforts to resolve the business dispute, rather than trying to set very high standards which may not be achievable for the parties concerned. This may be related to the qualifications of an arbitrator, choice of venue, choice of organisation in case the parties have decided to go for institutional arbitration, the engagement of lawyers, etc. For every such thing, there are different levels of services available, and it is for the parties to decide – jointly and severally – as to how to prioritise their requirements and to what level – both high and low – each would like to swing.

(6) Heavily One-Sided

It is the endeavour of the party having more bargaining power in a contractual relationship to get the contract, including the dispute resolution clause, drafted in a manner which suits that party, however, the extra zeal and enthusiasm to get a contract drafted in a manner which is heavily tilted in its favour may boomerang, even if the other party is willing to sign on the dotted line. The most important thing for a contract is that it should be fair, and even if the party with a better bargaining power has got the contract drafted to suit it, it should not be heavily one-sided as such contracts may not be upheld in a court of law, particularly in democratic countries with evolved judiciary, keeping public interest in mind. Egalitarian values and public interest are paramount in a large number of countries were one-sided contracts are looked down upon, and courts – as we have seen very often in India – can go to the extent of exercising their extraordinary discretion to terminate such contracts. Thus, it is important for prudent business is to realise that lop-sided contracts in favour of one party may not serve the purpose at the end of the day. Hence, the contracts should be reasonable and just, providing almost equal and fair opportunity to both the parties to the contract, both performance and resolution of any disputes.

CONCLUSION

Dispute resolution clauses, as we have understood, need not be taken lightly and if they find a place in the contract, must be dealt with due caution and care. These clauses are not just technical formalities to be completed in a draft agreement for the purpose of somehow getting the task of formation of contract completed. Application of mind is required to understand the nitty-gritty of the dispute resolution clause, so that the parties are able to understand the real implications – particularly related to time, expenses and achievable results – and do not fall prey, later on, to another dispute arising because of the dispute resolution clause itself. Agreeing to any dispute resolution clause, proposed by one of the parties, in a mechanical manner can be detrimental to business and even individuals making decisions for the business.

Clarity of thought and purpose is the foremost requirement for the parties in business as to how they would like to resolve the disputes and the dispute resolution clause can be termed to be serving its real purpose if it reflects the true understanding between the parties. In international commercial contracts, such clarity may be missing due to a large number of factors to be considered at the time of formation of contract. It is better to take a little bit more time to arrive at a decision regarding giving consent to the dispute resolution clause rather than wasting time, effort and money in interpreting it later.

The old adage sums it all: act in haste, repent at leisure.