

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION NO. 1288 OF 2015**

The Shipping Corporation of India Ltd. .. Petitioner  
Vs.

Dynametic Overseas Pvt. Ltd. .. Respondent

Ms. Usha Srivastava i/b Consulta Juris for the Petitioner.

None for the Respondent.

**CORAM : K.R. SHRIRAM, J.**

**DATED : 4<sup>TH</sup> OCTOBER, 2016.**

**P. C.**

1            This Petition is filed challenging an award dated 04.04.2015 passed by the sole arbitrator Shri Justice S.P. Bharucha (retired), the former Chief Justice of India, in which the operative part reads as under :-

*“In the case before me there is no clause which can be held to constitute a valid and binding agreement nor is there correspondence between the parties or attendant circumstances which make it evident that the parties had an agreement in writing or were ad idem in their intention to refer such disputes as might arise between them to an arbitrator under the provisions of the said Act.*

*For the above reasons, I come to the conclusion that there is no arbitration agreement between the parties and that, consequently, the disputes raised in the Statement of Claim are not arbitrable. The claim is dismissed. ”*

2           The Apex Court while appointing the sole arbitrator had left open the question of the arbitrability of the claims. Therefore, the respondent had filed a counter statement challenging the jurisdiction of the arbitrator. The respondent submitted in its counter statement that there was no valid or subsisting arbitration agreement between the parties within the meaning of the Arbitration and Conciliation Act, 1996. The learned Arbitrator, therefore, proceeded to decide the arbitrability of the claims first.

3           The dispute arises out of a charter party. In the statement of claim it was stated that “ the terms and conditions under the said time Charter Party Agreement were accepted by the respondent as fixture note was duly signed by the respondents and claimants on 15.02.1999”. The charter party is also dated 15.02.1999 and both the claimant and the respondent had not signed the same.

4           Clause 45 of the charter party is an arbitration clause, Sub Clause A & B provide all disputes arising therefrom shall be arbitrated at New York or London, respectively. The entire clause has been scored out by

lines drawn across its first and last line and by a line drawn diagonally across it. Above the scored out clause 45 (b) appear the following words in type "Arbitration in Calcutta English law to apply London".

5           The learned Arbitrator thus observed that the fixture note that appears on the letterhead of the shipping agents does not contain an arbitration clause or any reference to arbitration and it requires the claimant and the respondent to sign it and refax it to the shipping agents. The learned Arbitrator after considering all the documents has come to the conclusion that the charter party in which arbitration clause appeared is not signed by the parties and the arbitration clause itself has been scored out. It is also observed by the learned arbitrator that the claimant relied upon the fixture note which sets out the main terms of the agreement between the parties but does not contain an arbitration clause or any reference to arbitration. Therefore, the learned arbitrator came to a conclusion that it is not an arbitration agreement within the meaning of Section 7(4) (a) of the Act nor can it be read as forming an arbitration agreement within the meaning of Section 7(4)(b), as contended by learned counsel for the claimant, for it is not shown to be a part of an exchange of correspondence which provides a record of the agreement to refer such

disputes as might arise between the parties to arbitration. Learned arbitrator has also concluded that even if the fixture note were to be read with the charter party, it does not make for an arbitration agreement within the meaning of Section 7 (4) (b) of the said Act for the arbitration clause in the charter party has been struck out and the words put in its place (quoted above) do not speak of an unequivocal intention of the parties to settle such disputes as might arise by recourse to arbitration. The arbitrator has also held that at best, the words are a proposal and the proposal is not shown to have been accepted.

6           The counsel appearing for the petitioner also relied upon the judgment of the Apex Court in the matter of Powertech World Wide Ltd. vs. Delvin International General Trading LLC reported in (2012) 1 SCC 361, to submit that an arbitration agreement may be in the form of an arbitration clause in the contract or in the form of a separate agreement or it could be also in the nature of exchange of correspondence. I am in agreement with the proposition indicated.

7           At the same time it is settled law that an interference is permissible in an arbitral award only when findings of arbitrator are

arbitrary or perverse, not when merely another view is possible. The Arbitrator has considered the fixture note, the charter party and the submissions of the counsels and has come to a conclusion that there is no unequivocal intention of parties to settle their disputes as might arise by recourse to arbitration. In other words the arbitrator has concluded that there is no valid and binding agreement nor correspondence between the parties or changed circumstances which make it evident that the parties had an agreement in writing or were ad-idem in their intention to refer such disputes as might arise between them to arbitration under the provisions of the Act. I am in total agreement with the interpretation of the learned arbitrator. Therefore I see no reason why this Court should interfere with the findings of the arbitrator.

8                      Arbitration Petition dismissed.

**(K.R. SHRIRAM, J.)**