CASE COMMENT: KK MODI VS KN MODI & OTHERS (1998)

Himanshu Kumar Singh*

Citation: AIR 1998 SC 1297

Date: 4 February 1998

Number of Judges: Two

Bench: Sujata V. Manohar, D.P. Wadhwa

Petitioner: K.K. Modi

Respondent: K.N. Modi & Ors.

Act: The Arbitration Act, 1940

INTRODUCTION

The case of K.K. Modi vs. K.N. Modi & Ors. (1998) stands as a landmark judgment within Indian corporate law, offering significant insights into the interpretation of arbitration agreements and the determination of arbitration awards under the purview of the Indian legal system.

This legal dispute between the factions within the Modi family delineates crucial considerations regarding the characterization of contractual clauses as arbitration agreements and the differentiation between decisions made by an expert and those qualifying as arbitration awards. The case's pivotal examination revolves around Clause 9 of the Memorandum of Understanding (MoU), addressing disputes and clarifications arising from the agreement.

In examining the legal nuances, the court assessed the essential attributes necessary to categorize an agreement as an arbitration clause, stressing elements such as the binding nature of tribunal decisions, the tribunal's jurisdiction derived from consent or statutory mandate, and the intended determination of substantive rights by the tribunal.

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Simultaneously, the court deliberated on the characteristics delineating an arbitration award, emphasizing the tribunal's judicial and binding nature, resolution of actual disputes, and the conclusive intent of the agreement.

This case holds paramount importance in elucidating the distinction between agreements seeking expert decisions and those forming arbitration clauses, thus establishing critical precedents in arbitration law interpretation within the Indian legal framework. The judgment provided definitive guidelines for assessing the nature of agreements and the decisions derived from such agreements, subsequently impacting the handling of disputes and the enforcement of decisions within corporate settings under Indian law.

The court's elucidation on these matters elucidates the statutory framework encompassing arbitration under the Arbitration Act, 1940, and subsequent legislative reforms, particularly the Arbitration and Conciliation Act, 1996, reflecting the evolution of India's arbitration jurisprudence.

The K.K. Modi vs. K.N. Modi & Ors. Case remains an instrumental legal pronouncement guiding the interpretation and understanding of arbitration agreements and decisions, offering substantial insights into the nuanced intersection of contractual agreements, expert determinations, and arbitration proceedings within India's corporate legal landscape.

Please note that the introduction provides a broad overview of the legal significance of the case without delving into specific factual details. If you need further details or a different focus in the introduction, feel free to let me know.

HISTORICAL BACKGROUND AND FACTS OF THE CASE

The Modi family, comprising Group A (Kedar Nath Modi, younger brother of Seth Gujjar Mal Modi, and his sons) and Group B (sons of late Gujjar Mal Modi, including K.K. Modi), collectively owned several public limited companies. Disputes and differences emerged between these groups concerning the management and control of these companies and their associated assets.

In an effort to resolve these conflicts, negotiations were initiated with the involvement of various financial institutions that had invested substantial public funds in the Modi family

owned companies. This negotiation process involved representatives from multiple banks, the Reserve Bank of India, and financial institutions.

On January 24, 1989, a crucial Memorandum of Understanding (MoU) was reached between Group A and Group B. The MoU delineated the division of companies and assets between the two groups. It outlined specific companies each group would manage, own, or control and detailed a ratio (40:60) for the division of assets between Group A and Group B.

Key provisions in the MoU stipulated that the valuation of assets and the transfer of shares were to be carried out in consultation with the Chairman of the Industrial Finance Corporation of India (IFCI). Additionally, Clause 9 of the MoU mandated that disputes or clarifications regarding the agreement's implementation would be referred to the Chairman of IFCI or their nominees, whose decisions would be deemed final and binding.

However, dissatisfaction arose among both groups concerning the reports provided by appointed valuation entities (M/s. S.B. Billimoria & Company and M/s. Bansi S. Mehta & Company) tasked with determining asset valuations and formulating a splitting scheme for certain companies. This dissatisfaction led to representations being made to the Chairman and Managing Director of IFCI, invoking Clause 9 of the MoU.

Subsequently, the Chairman of IFCI formed a committee of experts to address the disputes and problems arising from the valuation reports. From March 12, 1995, to December 8, 1995, discussions and meetings occurred between the committee, the Chairman of IFCI, and representatives from both Group A and Group B.

Further complexities arose when the Chairman of IFCI issued a final report, claiming it as the conclusive decision in the matter. Although this report wasn't submitted to the court, it contained directions for implementation by the nominated chairman.

In response, Group B filed an arbitration petition under Section 33 of the Arbitration Act, 1940, challenging the legality and validity of the directions issued by the Chairman and Managing Director of IFCI. They also lodged a civil suit in the Delhi High Court, contesting the directions, stating that they constituted a decision and not an arbitration award

These events form the crux of the dispute between Group A and Group B within the Modi family, revolving around the MoU, asset valuations, and the intervention of the IFCI Chairman in settling the conflicts between the two groups.

WHAT HAPPENED AFTER THE DISPUTE AROSE?

On the 8th of December 1995, the Chairman, IFCI gave his detailed decision/report. In his cover letter of 8th of December, 1995, the Chairman and Managing Director, Industrial Finance Corporation of India Ltd. has described this report as his decision on each dispute raised or clarification sought. He has quoted in the cover letter that since that memorandum of Understanding had already been implemented to a large extent from 1989 to 1995, with the decisions on the disputes/clarifications given by him now in the enclosed report, he has hoped that it would be possible to implement the remaining part of the Memorandum of Understanding. He has drawn attention to paragraph 9 of his report where he has said that it is now left to the members of Groups A and B to settle amongst themselves the family matter without any further reference to the Chairman and Managing Director of the Industrial Finance Corporation of India. In paragraph 7 of the letter, he stated that on the basis of the total valuation of Modi Group assets and liabilities and allocation thereof between Groups A and B and the decisions given by him in the report, a sum of Rs. 2135.55 lakhs would be payable by Group B to Group A. Group B with IFCI at its Delhi Regional Office should deposit the said amount by 15th of January, 1996 failing which Group B will be liable to pay interest at the prevailing prime lending rate of the State Bank of India (which was then 16.5% p.a.).

O This report was not filed in Court as an award nor was any application filed by Group B to make the Report a rule or decree of the Court. The Chairman, Modipon Ltd., who was an independent Chairman nominated by IFCI, however, issued a series of directions for implementing or giving effect to the Report of 8th of December, 1995.

WHAT IS THE RELATION OF THE DISPUTE WITH ARBITRATION?

On 18th of May, 1996 the present appellants (Group B) filed an arbitration petition under Section 33 of the Arbitration Act, 1940, bearing O.M.P. No. 58 of 1996 in the Delhi High Court challenging the legality and validity of the said decision of the Chairman and Managing Director, IFCI dated 8.12.1995 on the basis that it was an award in arbitration proceedings between Group A and Group B. In the petition, other directions were also sought against the Chairman, Modipon Ltd.

On the same day, Group B also filed Civil Suit No. 1394 of 1996 in the Delhi High Court to challenge the same decision of the Chairman and Managing Director, IFCI dated 8.12.1995. The averments and prayers in this suit were substantially the same as those in the arbitration petition. In one paragraph, however, in the plaint, it was stated that the same reliefs were being claimed in a suit in the event of it being held that the decision of the Chairman and Managing Director, IFCI was not an arbitration award but was just a decision.

ISSUES RAISED

- **Question 1:** *Whether Clause 9 of the Memorandum of Understanding dated 24th of January, 1989 constitutes an arbitration agreement; and whether the decision of the Chairman, IFCI dated 8th December, 1995 constitutes an award.* and
- **Question 2:** *Whether Suit No. 1394/1996 is an abuse of the process of court?*

Whether Clause 9 of the Memorandum of Understanding dated 24th of January 1989 constitutes an arbitration agreement?

Among the attributes, which must be present for an agreement to be considered as an arbitration agreement, are:

1. The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement,

2. The jurisdiction of the tribunal to decide the rights of parties must derive either from the consent of the parties or from an order of the Court or from a statute, the terms of which make it clear that the process is to be an arbitration,

3. The agreement must contemplate that the agreed tribunal will determine the substantive rights of parties.

4. That the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides.

5 That the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly,

6. The agreement must contemplate that the tribunal will make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal.

This Court held that this was not an arbitration clause. It did not envisage that any difference or dispute that may arise in the execution of the works should be referred to the arbitration of an arbitrator.

Whether the decision of the Chairman, IFCI dated, 8 December 1995 constitutes an award.

The authorities seem to agree that while there are no conclusive tests, largely; one can follow a set of guidelines in deciding whether the agreement is to refer an issue to an expert or whether the parties have agreed to resolve disputes through arbitration.

Therefore, our courts have laid emphasis on

1. Existence of disputes as against intention to avoid future disputes;
2. The tribunal or forum so chosen is intended to act judicially after taking into account relevant evidence before it and the submissions made by the parties before it; and
3. The decision is intended to bind the parties.
4. The nomenclature used by the parties may not be conclusive.

One must examine the true intent and purpose of the agreement.

There are, of course, the statutory requirements of a written agreement, existing or future disputes and an intention to refer them to arbitration. (Vide Section 2 Arbitration Act 1940 and Section 7 Arbitration and Conciliation Act, 1996).

WHAT DID THE COURT OBSERVE?

The court meticulously observed the correspondence between Group A and Group B members with the Chairman, IFCI, acknowledging the use of the term "arbitration" in connection with Clause 9. However, the mere usage of this term did not conclusively categorize the proceedings as arbitration.

The court discerned the parties' intent, clarifying that the Chairman, IFCI, wasn't mandated to make judicial determinations based solely on the evidence presented by the parties. Instead, the Chairman had the liberty to conduct independent inquiries, apply personal expertise, seek external expert assistance, and render decisions regarding asset valuation and division as an expert rather than an arbitrator.

Despite submissions made before the Chairman, IFCI, the court elucidated that the decision-making process didn't transform into arbitration proceedings. The finality of the decision, though indicative of an expert's decision, wasn't conclusive evidence of it being an arbitration award.

The learned Single Judge reviewed parallel proceedings initiated by the appellants, notably arbitration proceedings and a suit. When an interim injunction obtained in arbitration proceedings was vacated, the appellants sought an injunction in the suit. The Single Judge perceived substantial identity between the issues in both proceedings, considering the suit an attempt to challenge the award via a different forum, thus branding it as an abuse of the court's process.

However, the learned senior counsel for the appellants contended that filing a separate suit, alongside the arbitration petition, was an alternative method to challenge the Chairman, IFCI's decision if it wasn't categorized as an arbitration award. The counsel argued that this act didn't constitute an abuse of the court's process as it provided an alternative recourse under the Memorandum of Understanding's interpretation.

The counsel highlighted the provision under Order 6 Rule 16 of the CPC, asserting that the court's striking out of the plaint was incorrect, emphasizing that the separate proceeding served as a legitimate alternative in the absence of an arbitration award.

This confluence of observations, the Single Judge's perspective, and the appellant's counsel's submission delineates the intricacies surrounding the characterization of the Chairman, IFCI's decision, the parallel proceedings, and the intent behind resorting to distinct legal routes under the Memorandum of Understanding.

FINALLY, WHAT DID THE COURT SAY?

The appeal of the appellants from the judgment of the Learned Judge striking out the plaint is, therefore, partly allowed and the suit, to the extent that it challenges independently the decision of the Chairman and Managing Director, IFCI as a decision and not as an award, is maintainable in the sense that it is not an abuse of the process of the court.

We make it clear that we are not examining the merits of the claim nor whether the plaint in the suit discloses a cause of action in this regard. The plaint leaves much to be desired and it is for the trial court to decide these and allied questions.

The plaint in so far as it challenges the decision as an award and on the same grounds as an award; or seeks to prevent the enforcement of that award by the Chairman, Modipon Ltd. or in any other way has been rightly considered as an abuse of the process of court since the same reliefs have already been asked for in the arbitration petition. The Transfer Case No. 13 of 1997 is, therefore, partly allowed.

Clause 9 provides as follows

"Implementation will be done in consultation with the financial institutions. For all disputes, clarifications etc, in respect of implementation of this agreement, the same shall be referred to the Chairman, IFCI or his nominees whose decisions will be final and binding on both the groups."

ANALYSIS

Interpretation of Clause 9: The court's examination of Clause 9 of the Memorandum of Understanding (MoU) concerning dispute resolution revealed the complexity of categorizing it as an arbitration clause. Despite the use of the term "arbitration" by involved parties, the court stressed that this alone didn't inherently designate the proceedings as arbitration.

Intent of Parties and Decision-Making Process: The court discerned the actual intention behind the agreement and the Chairman, IFCI's role. It highlighted that the Chairman's decision-making process didn't align with the principles of arbitration. Instead, the Chairman acted as an expert, not an arbitrator, having the liberty to conduct independent inquiries and render decisions based on personal expertise.

Finality of Decision and Expert Determination: Although the finality of the decision was observed, the court emphasized that it wasn't conclusive evidence of an arbitration award. It underscored the nature of functions expected from the Chairman, IFCI, which leaned more toward an expert determination rather than an arbitration award.

Parallel Proceedings and Abuse of Court Process: The court evaluated the appellants' initiation of two parallel proceedings: arbitration and a suit. The Single Judge viewed the suit as an abuse of the court's process, considering it an attempt to litigate the same issues from arbitration proceedings in a different forum. This assessment led to the striking out of the plaint under Order 6 Rule 16 of the CPC.

Appellants' Counsel Argument: The counsel representing the appellants contended that filing a separate suit wasn't an abuse of the court's process. They argued that it provided an alternative method to challenge the Chairman, IFCI's decision, especially if it didn't amount to an arbitration award as per the MoU.

Legal Ambiguity and Alternative Recourse: The case highlighted the legal ambiguity in categorizing the Chairman's decision and the challenges in interpreting the nature of agreements concerning arbitration clauses. It also emphasized the need for alternative recourse in the absence of a clear arbitration award, demonstrating complexities in the enforcement and interpretation of contractual agreements in corporate disputes.

Judicial Review and Dispute Resolution Mechanisms: The case showcased the court's role in reviewing dispute resolution mechanisms within contractual agreements. It underscored the challenges in discerning between arbitration clauses and expert determinations while reaffirming the court's authority to evaluate the legality and nature of decisions arising from such agreements.

Implications for Future Corporate Disputes: The case set precedents and offered insights into the intricacies of interpreting clauses within MoUs and the challenges in determining whether decisions derived from such agreements qualify as arbitration awards. This judgment's implications significantly impact the handling of corporate disputes and the recourse available to disputing parties under similar circumstances.

CONCLUSION

In conclusion, the case of K.K. Modi vs. K.N. Modi & Ors. (1998) represents a significant legal deliberation within the realm of arbitration law in corporate disputes. The court's meticulous examination of Clause 9 of the Memorandum of Understanding shed light on the complexities inherent in distinguishing between arbitration clauses and expert determinations. The ruling elucidated that the mere use of the term "arbitration" in contractual clauses does not inherently denote arbitration proceedings. It underscored the pivotal role of the Chairman, IFCI, whose decision-making process aligned more with expert determination rather than an arbitration award. The case highlighted the intricacies of parallel proceedings and the challenges in discerning abuse of the court's process. Furthermore, it underscored the need for alternative legal recourse in the absence of a clear arbitration award. This judgment serves as a guiding precedent, providing valuable insights into the interpretation of contractual clauses, dispute resolution mechanisms, and the complexities surrounding the characterization of decisions derived from such agreements within the purview of arbitration laws in corporate settings.