

Signature is not a formal requirement under Section 7(4)(b) or 7(5) of the Arbitration Act if the parties have otherwise consented to arbitration

The Supreme Court in the case of **Glencore International AG vs Shree Ganesh Metals [2025 INSC 1036] dated August 25, 2025**, has clarified that merely because an arbitration agreement was not signed, there is no bar to referring the dispute to arbitration, if the parties have otherwise consented to arbitration. Noting the fact that the requirement of the arbitration agreement being in writing has been continued in Section 7(3) of the Arbitration Act, 1996, the Court observed that Section 7(4) only added that an arbitration agreement could be found in the circumstances mentioned in the three sub-clauses that make up Section 7(4) but that did not mean that, in all cases, an arbitration agreement needs to be signed.

The Court also held that the only prerequisite is that it should be in writing, as pointed out in Section 7(3), and this legal principle would hold good equally for an arbitration agreement covered by Sections 44 and 45 of the Act of 1996. Further, the Apex Court quashed the Delhi High Court's decision, which declined reference to arbitration merely because Respondent No.1 didn't sign the arbitration agreement. Since the Respondent No.1 consented to the contractual terms via email, the Apex Court held that the High Court's refusal to refer to an arbitration on the ground of non-signing of the arbitration agreement cannot be sustained.

Referring to the decision in *Govind Rubber Limited vs. Louis Dreyfus Commodities Asia Private Limited [(2015) 13 SCC 477]*, the Apex Court reiterated that “an arbitration agreement, even though in writing, need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams, or other means of telecommunication. Section 7(4)(c) provides that there can be an arbitration agreement in the exchange of statements of claims and defence in which the existence of the agreement is alleged by one party and not denied by the other. If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement”.

Accordingly, the Apex Court allowed the appeal, and the case was restored to the file of the High Court to be referred to an arbitration in accordance with law.

Link to the judgment - https://api.sci.gov.in/supremecourt/2019/41844/41844_2019_13_1501_63666_Judgement_25-Aug-2025.pdf