

## The terms of an arbitration agreement cannot be superseded by oral agreement

The Delhi High Court in its recent judgment has reemphasized the supremacy of a written arbitration agreement and the terms contained therein, over any other understanding the parties may come to, orally.

Justice Prathiba M. Singh while dealing with a challenge under section 34(2) of the Arbitration and Conciliation Act, 1996 set aside the award passed by a three-member Tribunal on the ground that the Tribunal was not constituted in consonance with the Arbitration Agreement.

### Facts Briefly:

Mother Boon Foods Pvt. Ltd. (Petitioner) was appointed as a contract-manufacturer -for manufacturing and packaging breads- by Mindscape One Marketing Pvt. Ltd. (Respondent), a leading company engaged in the manufacturing and marketing of bread.

A contract was signed to effectuate the aforesaid agreement and subsequently the Petitioner commenced production. Over time, disputes between the parties arose which led to termination of the said agreement. Thereafter the petitioner raised certain claims which were rejected by the Respondent, leading to the invocation of the arbitration agreement.

In furtherance of the invocation, the Respondent constituted a three-member tribunal as opposed to appointing a sole arbitrator as stipulated in the arbitration agreement.

The Petitioner objected to the constitution of the arbitral tribunal and preferred not to participate in the arbitration proceedings.

The Petitioner pleaded violation of the arbitration agreement by the Respondent and challenged the Arbitral Award passed by the Tribunal before the High Court, on the



**Shambhu Sharan**  
Partner  
E: [shmbhu@singhania.in](mailto:shmbhu@singhania.in)



**Ambika**  
Associate  
E: [ambika@singhania.in](mailto:ambika@singhania.in)

ground that the constitution of three-member tribunal was not in accordance with the agreement.

However it was the Respondent's case that the three member tribunal was in fact constituted at the instance of the Petitioner, who demanded for a three-member tribunal since it would help meet the ends of fairness. Accordingly, the three member tribunal was constituted to give a fairer adjudication process for the Petitioner.

**The Verdict:**

The High Court opined that the arbitration agreement in the given case was in the form of an arbitration clause -which was in writing- in line with the mandate of section 7, given under the Arbitration and Conciliation Act of 1996 (hereinafter "the Act") . Therefore the same could not have been superseded by any oral demand or agreement.

In view of the Court, if a three member tribunal had to be appointed, then the same ought to have been done with the consent of the Petitioner and in accordance with the provisions of the Act. There was, however, nothing on record to show that the Petitioner indeed demanded for constitution of a three member tribunal. The arbitration agreement, as per the 1996 Act, has to be in writing and since the arbitration clause, which is a part of the contract, was in writing, the same could not have been superseded by any oral demand or agreement.

Furthermore, the Petitioner may have been clever in orally demanding a three member tribunal but clearly, the procedure adopted by the Respondent was impermissible. The Petitioner having raised its objection at the initial stage itself to the constitution of the tribunal but the tribunal having proceeded further with the matter, the Petitioner is entitled to challenge the said constitution at this stage by raising its objections under Section 34. A reliance was also placed on the judgment in the matter of *Prime Industries Ltd. v. SEIL Ltd., 2010 LawSuit (Del) 996* which holds that the will of the parties, as reflected in the agreement, has to prevail.