**Arbitration agreements Sec.7**

***Features***:

1. Arbitration agreement means an agreement by the parties to submit to arbitration all or certain disputes which have arisen 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---
5. a document signed by parties;
6. An exchange of letters, telex, telegrams or other means of telecommunication, including through electronic means which provides a record of the agreement; or
7. (c) An exchange of statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other
8. 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 to make that arbitration clause part of the contract

* In **P. Ananda Gajapathi Raju v. P.V.G. Raju,** *AIR 2000 SC 1886* and **Tamil Nadu Electricity Board v. Sumathi,** *AIR 2000 SC 1603* - the SC has held that, there is no provision in the Arbitration Conciliation Act, 1996 for referring a matter to an arbitrator by intervention of the Court.
* However, if during the pendency of the proceedings in the Court, the parties have entered in to an arbitration agreement then they have to proceed in accordance with the provisions of the 1996 Act.

***Are the Parties definite about going to Arbitration?***

* Sec.7(1) means that the parties are definite about going to arbitration.
* The words used in the agreement like the parties may go to arbitration or may consider going to arbitration or may also go to arbitration.

**Jagadish Chander v. Ramesh Chander**, *(2007) 5 SCC 719*

* The SC held that the existence of an arbitration agreement as defined under section 7 of the Act is a condition precedent for exercise of power to appoint an arbitrator under Sec 11 of the Act It is not permissible to appoint an arbitrator to adjudicate the dispute between the parties in the absence on an arbitration agreement or mutual consent.
* In the present case, clause 16 of the partnership deed provides that “if there is any dispute touching the partnership arising between the partners, the same shall be mutually decided the parties or shall be referred to arbitration **if the parties so determine**.”
* The expression “determines” completely changes the complexion of the provision.
* If the clause had merely stated that in the event of disputes arising between the parties, they “shall be referred to arbitration”, it would have been an arbitration agreement.
* Mere use of word “arbitration” or “arbitrator” in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration.
* For example use of words such as “parties can, if they so desire, refer their disputes to arbitration”, or “in the event of any dispute, the parties may also agree to refer the same to arbitration” or “if any dispute arises between the parties they should consider settlement by arbitration”---- such clauses indicate that the clause is not intended to be an arbitration agreement.
* Similarly a clause which states that “if the parties so decide, the disputes shall be referred to arbitration” is not arbitration
* Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration is not an arbitration agreement, but an agreement to enter in to arbitration agreement in future.

**Wellington Associates Ltd,-V- Kirit Mehta, (2000) 4 SCC 272**

* The SC held that the fallowing clause was not an arbitration agreement—

“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, 1940, by each party appointing one arbitrator and the arbitrators so appointed selecting an umpire. The venue of the arbitration shall be Bombay.”

* The words may could not be construed as shall.

***Does an Arbitration Agreement need to be Stamped?***

* The arbitration agreement shall be stamped.

**Garware Wall Ropes Ltd,-V- coastal Marine constructions and Engineering ltd ; AIR 2019 SC 2053**

* Sec. 33 of the Karnataka Stamp Act, 1957, reads that every person having by Law or consent of parties authority to receive evidence, and every person in charge of a public, office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his function, shall, if it appears to him that such instrument is not duly stamped, impound the same.
* Sec. 7(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 to make that arbitration clause part of the contract.
* Held that an arbitration agreement contained in an unstamped contract cannot be taken in evidence and invoked. It was further held that, in case the Court is faced with an unstamped document, it must proceed to impound the same, in accordance with the provisions of the Stamp Act; only once such an impounding is done — the deficit stamp duty and penalty paid, can the Court proceed on the basis of the arbitration agreement.

***Incorporation by Reference***

**Inox wind Ltd,-V-Thermocables, (2018) 2 SCC 519**

**Facts**

* In this case two purchase orders dated 13-12 2012 and 2-2-2013 were issued by the appellants to the respondent for supply of cables for their wind turbine generators. According to the purchase order, the supply was to be according to the terms mentioned in the order and the standard terms and conditions that were attached thereto.
* The standard terms conditions, apart from other conditions contained a clause pertaining to arbitration. The said clause provided for arbitration by a sole arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The respondent accepted all the terms and conditions in the purchase order except the delivery period.
* Disputes having arisen, the appellant, issued a notice dated 30-10-2014 proposing the name of a sole arbitrator as per the terms of the standard terms and conditions. In the absence of any response from the respondent, the appellants- Inox Wind, filed an application under section 11(6) of the 1996 Act before the Allahabad HC.
* The HC was not convinced of the existence of the Arbitration agreement.

**High Court**

* The HC dismissed the said application by holding that an arbitrator cannot be appointed as the appellant did not prove the existence of an arbitration agreement.
* The HC relied upon the judgement of the SC in **M.R. Engineers and Contractors (p) Ltd-V- Som Datt Builders Ltd**, (2009) 7 SCC 696, to hold that there is no special reference to the arbitration clause in the standard terms and conditions, so the arbitration clause cannot be said to have been incorporated in to the purchase order.

**Supreme Court**

* The SC held that the arbitration clause is contained in the standard terms and conditions contained in the attachment to the contract.
* The SC held, a conscious acceptance of the arbitration clause found in another document is necessary for the purpose of incorporating it in to the contract.
* Where there is a reference to a document in a contract, and the reference shows that the document was not intended to be incorporated in entirety, then the reference will not make the arbitration clause in the document, a part of the contract, unless there is a special reference to the arbitration clause so as to make it applicable
* In this case before the SC, both parties depended on the M.R. Engineers Case.