Jus Corpus Law Journal
Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

Arbitrability of Antitrust Claims in Light of the Mitsubishi Motor Case

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Received 17 September 2022; *Accepted* 26 September 2022; *Published* 05 October 2022

Arbitration is the widely used process of resolving disputes in the corporate sector nationally and internationally. However, it is not without controversy and is often perceived as an unfair means of resolving complex legal situations. The Mitsubishi Motor Case in 2013 however, has revived the use of arbitration to resolve disputes in the resolution of business disputes and to also regulate unfair business practices through an arbitral process. The case discusses the legality of the antitrust claims filed by the parties under Arbitration. The vital question aroused here is whether an antitrust claim can be decided by the Arbitral Tribunal or not. This article sheds light on the arbitrability of the Antitrust claims in context with the Mitsubishi Motor Case by briefly discussing the different decisions of the Courts on the matter and how the decisions affected the litigation of antitrust cases.

Keywords: *arbitration, mitsubishi case, antitrust claims.*

INTRODUCTION

Arbitration is a process by which two or more parties can resolve their disputes without going to court. The parties involved in arbitration agree to submit their disputes to a third party, usually an arbitrator, who will make a final decision on the dispute. So in other words we can say that the parties in the commercial transactions are getting attracted to arbitration in order to

avoid the long and tiresome process of litigation. Therefore, arbitration clauses have become one of the most crucial parts of International contracts. The Parties in commercial transactions are attracted to the idea of Arbitration in order to eliminate any uncertainties in case a dispute occurs during the transaction. But there are often issues that cannot be resolved by the arbitration irrespective of the arbitration clause being embedded in the agreement. The parameter of the arbitration clause is very wide but can all the issues arising out of the agreement be resolved by the process of arbitration? One of many such issues is antitrust claims.

ARE ANTITRUST CLAIMS ARBITRABLE IN NATURE?

Antitrust claims are the claims filed by individuals, organisations, or agencies related to or arising out of violation of competition laws, prohibition of monopolies, unfair competition in trades and deceptive acts in trades or other types of fraud. These Antitrust claims are regulated by Federal Antitrust laws such as Sherman Antitrust Act, Clayton act, Federal trade commission act, and Robinson-Patman Act, this also includes state-wise laws which complement Federal laws. Now, let's discuss who can file the antitrust lawsuits.

Antitrust lawsuits can be filed by:

Individuals - In case the person is charged more for the product or service because of anti-competitive practices, then the group of consumers can file an antitrust lawsuit.

For example - XCY is a textiles manufacturing company that reduces the prices of its products to very low in order to buy up several of its competitors. In such a situation the group of consumers can file antitrust lawsuits.

Companies - In case the company is engaged in the anticompetitive practices of creating a monopoly, the competitors can file an antitrust lawsuit against it.

For example, The Microsoft Case is one big example of an antitrust lawsuit. Microsoft was found guilty of violating anti-competitive laws and lost around 70 billion dollars in the trial.[1]

[1] Samir Gandhi, 'Antitrust and Competition in India' (*Global Compliance*) <https://www.globalcompliancenews.com/antitrust-and-competition/antitrust-and-competition-in-india/> accessed 15 September 2022

Now, let's discuss what anti-competitive practices are and whether are they arbitrable in nature. Some of the anti-competitive practices[2] are:

1. Monopolies: A monopoly is when one company or an individual has most of the business.
2. Price fixing: Price fixing is when the competitor has an agreement on increasing or fixing the price for the products or services they are providing.
3. Bid rigging: When the competitors pre-decide on the winning bid.
4. Exclusive dealing: When the buyer exclusively purchases from a single seller only.
5. Tying: When the company puts the condition on selling a particular product or service only once they make the purchase of another one.
6. Agreement to divide the market: Agreement to divide the market is when the company decides to sell in a particular area or certain customers.
7. Price Discrimination: Changing different prices to affect the competition and market.

With the increasing popularity of Arbitration, people keep on using the arbitration clause in agreements without understanding the parameter of the clause on whether the antitrust claims are covered under the arbitration clause or not. Previously it was not possible to submit the antitrust claims to arbitration. The federal circuit has rejected several pleas for the reason that the arbitration is not competent to deal with antitrust issues and it is not appropriate to enforce the arbitration for such issues.

American Safety Equipment Corp. v J.P. Mcguire & Co.[3] was one of the cases which were rejected on the same ground, even when the arbitration clause was there in the agreement. With this, the Court stated that the arbitration clauses are applicable to claims arising from federal statutes if the statute had a congressional intention to preclude a waiver of judicial remedies. The Sherman Act nor any other act stated a congressional intention to preclude a waiver of judicial remedies. As a result, it is not appropriate to say that arbitration is inappropriate for antitrust claims. In the Landmark judgement of the Mitsubishi Motors case, the United States

[2] Monesh Mehndiratta, 'Anti Trust laws' (*Ipleaders*, 5 August 2022) <https://blog.ipleaders.in/antitrust-laws/> accessed 16 September 2022

[3] American Safety Equipment Corp. v J.P. Mcguire & Co.,[1968] 391 F.2d 821, 825

Supreme Court has allowed the arbitration, which has opened the doors for the arbitration enthusiast.

Let's further discuss the Mitsubishi Motor case and the decision given by the courts:

BRIEF FACTS RELATED TO THE MITSUBISHI MOTORS CASE

Mitsubishi Motors[4] was the result of the joint venture entered by the 3 major corporations i.e. Mitsubishi Heavy Industries Inc., another Japanese corporation, and Swiss corporation Chrysler International, S.A. ("CISA"). Furthermore, the Puerto Rican corporation Soler Chrysler-Plymouth, Inc. ("Soler") has entered into a distribution and sales agreement with both Mitsubishi and CISA for the sale in Puerto Rico of automobiles manufactured by Mitsubishi and into a sales procedure agreement with both Mitsubishi and CISA which resulted in the reduced profits for the investors. Mitsubishi took the action against Soler in federal district court under the Federal Arbitration Act and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and also filed a request for arbitration before the Japan Commercial Arbitration Association.

In response to the claims and allegations filed against the Soler; the Soler denied all the claims and allegations and filed a counterclaim against Mitsubishi and CISA for the conspiracy to divide the markets in restraints of trade.

THE DISTRICT COURT'S DECISION

In the following case, the district court ordered that the dispute is arbitrable due to the international nature of the contract and cited Article H1(3)[5] of the convention. The District Court did not allow the arbitration proceedings in the case even if the parties had the arbitration clause in their agreement.

THE COURT OF APPEALS' DECISION

The Court of Appeals has stated that the antitrust claims are not arbitrable in nature and that arbitration was an inappropriate mechanism for the resolution of the antitrust claims. The Court

[4] *Mitsubishi Motors Corp. v Soler ChryslerPlymouth, Inc* [1985] U.S. 614

[5] Laurence M. Smith, 'Determining the Arbitrability of International Antitrust Disputes' (1986) 8(2) J. Int'l L <https://scholarship.law.upenn.edu/jil/vol8/iss2/4/> accessed 16 September 2022

also held that Article II(1)[6] and Article II(3)[7] shall be read together if the matters or issues related to domestic policies are involved. The court held that because securities and antitrust laws affect the public, the district court should decide first, whether the antitrust issues "permeated" the contractual disputes or whether bifurcation was appropriate.

THE UNITED STATES SUPREME COURT'S DECISION

The United States Supreme Court held that there is "no warrant in the Arbitration Act for implying in every contract within its ken a presumption against arbitration of statutory claims." The Court further stated that, as with any other contract, the parties' intentions control, but that those intentions are to be generously construed as to issues of arbitrability.'[8] Furthermore, the Court addressed the dispute with Soler's claims to be non-arbitrable, even though the arbitration clause was present in the agreement. The Court held that the policy mentioned under the American Safety Doctrine is not applicable to international commercial disputes. The Court also stated that the complexity of the subject matter should not be the reason to question the decision by an arbitral panel. When two parties decide to enter into an agreement and decide to resolve their disputes with the help of the arbitral tribunal, the tribunal is bound to conduct the proceedings in accordance with the national laws.

INTERPRETATIONS DERIVED FROM THE RULING

There are two possible interpretations of the ruling. The first interpretation is that a claim based on economic competition or restraint of trade is not arbitrable and therefore should not be the subject of arbitration proceedings. Under this interpretation, the parties involved would not be able to compel a third party to act as an arbitrator in their disputes.

The second interpretation of the ruling is that the court intended merely to state that a claim of antitrust violations can be litigated in national courts regardless of whether it is initiated before or after the initiation of arbitration proceedings. Under this interpretation, the arbitral tribunal would not be precluded from entertaining a matter that is outside the scope of the arbitration agreement and that would ordinarily be decided by a national court. For example, if a plaintiff

[6] New York Convention 1958, art. II (1)
[7] New York Convention 1958 art. I (3)
[8] *Mitsubishi Motors Corp. v Soler ChryslerPlymouth, Inc.* [1985] U.S. 614

filed an action for antitrust violations before commencing arbitration proceedings against the defendant, the arbitral tribunal could refuse to entertain the matter on the grounds that the dispute had already been determined in the lawsuit.

On the other hand, if the claim was filed against the defendant after the commencement of the arbitration proceedings but before the termination of those proceedings, the arbitrators would be within their jurisdiction to entertain the claims.

CONSEQUENCES OF THE RULING

There are a number of potential consequences of this ruling that may or may not have an impact on the future of the arbitration process in the international commercial aspect. One of the main concerns expressed is that the ruling may encourage plaintiffs to forum shops by choosing to sue an infringing party in the country where the infringement occurred instead of bringing a claim in the arbitral forum in which the case would have been heard initially. This concern is not entirely unfounded, as a decision in favour of the plaintiff may be more likely if the lawsuit is brought in the country where the infringement occurred rather than in the country where the parties would have originally agreed to arbitrate their dispute. There is also concern that the imposition of punitive damages in certain jurisdictions may have adverse consequences on the ability of arbitrators to award these types of damages.

I would like to begin by acknowledging that the Mitsubishi Motors Case was a significant ruling because it set an important precedent in terms of what Courts consider to be fair and equitable when awarding punitive damages. As a threshold matter, the case provided some clarity as to how arbitrators should view the level of proof necessary in order to award punitive (or exemplary) damages in arbitral proceedings. Specifically, the courts recognized that it should be a high burden for the party seeking to obtain an award for punitive damages, including the need for clear evidence that the party acted with malice or gross negligence. In this regard, the court further stated that there must be evidence of actual intent to harm and that such intent should be present at all times during the contract negotiations process.

ANALYSIS AND CONCLUSION

With the increasing popularity of arbitration and the use of arbitration clauses in agreements, companies are ignoring certain essential factors before including the arbitration clauses in the agreements. One very such issue was the parameter of the arbitral tribunal. It is essential to understand if the arbitral tribunal is capable of or has the jurisdiction to resolve certain kinds of disputes or claims. It is one very essential aspect that needs to be considered before filing the claims in the arbitral tribunal. Previously several claims were rejected by the courts, the reason being said that the arbitral tribunal does not have jurisdiction as the intent of claims is congressional. The Mitsubishi Motors Case has brought a new trend in international commercial arbitration, by permitting the arbitration proceedings it has opened gates for a wide variety of statutory claims. The Supreme Court held that the Mitsubishi Motors Case requires arbitration as the parties have agreed to resolve their disputes with the arbitration. The court also stated that the decisions of the arbitral tribunal shall not be judged only on the basis of the subject matter only. The fact that the parties have agreed to resolve their disputes in relation to the agreements with the arbitration, the courts should allow the arbitration proceedings. The judgement of the Supreme Court in the Mitsubishi Motors case has proven to be a very essential precedent for the arbitration proceedings.