

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+ C.R.P. 165/2014 & CM 19143/2014 (stay)**

% Reserved on: 2<sup>nd</sup> February, 2015  
Decided on: 5<sup>th</sup> February, 2015

M/S ABHIJEET INFRA PVT LTD ..... Petitioner  
Through Mr. N.K. Kantawala, Mr. Harsh  
Makhija, Advs.  
versus

M/S MILSTONES SWITCHGEARS PVT LTD ..... Respondent  
Through Mr. Chandra Shekhar Yadav, Adv.

**Coram:**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J.**

1. The petitioner challenges the order dated 29<sup>th</sup> September, 2014 whereby his application under Section 8 of the Arbitration and Conciliation Act was dismissed.

2. The respondent/plaintiff filed a suit before the Civil Judge seeking recovery for a sum of ₹78,793/- along with pendentelite and future interest. In the suit, the respondent pleaded that the plaintiff company which was engaged in the business of manufacture, supply and installation of electrical equipments was approached by the petitioner/defendant for supply of Boiler MCC panel and miscellaneous lighting distribution board to which the respondent/plaintiff agreed. In pursuance thereof the petitioner/defendant placed an order for supply of said material vide their purchase orders No.

4800001160 and 4800001855 dated 6<sup>th</sup> January, 2009 and dated 11<sup>th</sup> June, 2009 respectively. In response to the said purchase orders placed by the petitioner, the respondent supplied the material at their site at power plant (CIAL Durgapur) 6, S.I.A., Digaul Avenue, Durgapur, Distt. Burdwan, West Bengal and raised the following invoices:

| S.No. | Bill No. | Date         | Amount (₹)         |
|-------|----------|--------------|--------------------|
| 1     | 684      | 31.03.2009   | 11,70,293/-        |
| 2     | 237      | 10.10.2009   | 5,52,024/-         |
| 3     | 249      | 27.10.2009   | 1,65,607/-         |
|       |          | <b>TOTAL</b> | <b>18,58,924/-</b> |

3. It was further stated in the plaint that the aforesaid supplies were against issuance of C-Form by the petitioner, however the petitioner has till date not issued C-Form to the respondent despite repeated requests. Thus, on non-account of supply of C-Forms the plaintiffs/respondent are liable to pay a sum of ₹37,018/- being the differential tax and the penalty of ₹30,281/- to the sales tax department. The defendant/petitioner are therefore liable to pay a sum of ₹ 67,299/- along with interest @ 24% per annum on the aforesaid amount.

4. On summons being issued the petitioner/defendant entered appearance and filed an application under Section 8 of the Arbitration and Conciliation Act (in short hereinafter referred to as the Act). In the application it was stated that the parties entered into an agreement dated 6<sup>th</sup> January, 2009 and the contract contained an arbitration clause and the same is reproduced below “*other terms and conditions*” that if there is any dispute arising

between the parties with respect to contract then they will have to resolve the same through arbitration.

5. The learned Civil Judge dismissed the application of the petitioner under Section 8 of the Act on the ground that along with the application under Section 8 of the Act the original agreement or a certified copy thereof is required to be filed, however the petitioner has not filed any such agreement, rather relies upon certain purchase orders which allegedly contain the arbitration Clause. Further these documents do not bear the signature of any official/AR of the plaintiff/respondent company and they are the documents of the petitioner/defendant. Thus it cannot be said that there existed an agreement between the parties.

6. I have heard learned counsel for the parties. It is trite law that purchase orders are also written contracts between the parties and the respondent/plaintiff cannot get away with the same by saying that it does not bear the signature of the authorized representative or any person from the plaintiff/respondent. In response to the purchase order the plaintiff/respondent has admittedly supplied goods and thus a valid contract had been entered between the parties.

7. Two purchase orders have been placed on record one dated 6<sup>th</sup> January, 2009 and the other dated 11<sup>th</sup> June, 2009. Learned counsel for the petitioner has not been able to show any arbitration Clause in the purchase order dated 6<sup>th</sup> January, 2009. In the purchase order dated 11<sup>th</sup> June, 2009 below the “*other terms and conditions*” it is mentioned “*dispute if any, whether commercial or otherwise shall be settled amicably between the parties. If the dispute is not resolved amicably then it shall be finally*

*decided by referring it to arbitration, which shall be subject to the Rules of Arbitration and provisions of the Arbitration & Conciliation Act 1996. All the disputes shall be resolved/settled under jurisdiction of West Bengal only.”*

8. Present is a clear case of misjoinder of causes of action and thus the Court is required to separate the two causes of action. Order II Rule 6 provides as under:

**“6. Power of Court to order separate trials.-**Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.”

9. Since with regard to purchase order/agreement dated 11<sup>th</sup> June, 2009 the parties are bound by the arbitration agreement, the dispute relating to the recovery of money, differential tax penalty and interest pendente lite and future in terms of C-Form are required to be decided by the arbitrator and in regard to purchase order dated 6<sup>th</sup> January, 2009 the disputes will have to be adjudicated in a civil suit.

10. Thus, the impugned order is set aside. The learned Civil Judge is directed to permit the respondent/petitioner to file an amended plaint with regard to cause of action relating to purchase order dated 6<sup>th</sup> January, 2009 for recovery of money, differential tax, penalty, interest pendente lite and future and in relation to the purchase order dated 11<sup>th</sup> June, 2009 relating to recovery of money, differential tax, penalty, interest pendente lite and future,

the respondent/plaintiff will be at liberty to proceed for arbitration in accordance with arbitration Clause.

11. Petition and application are disposed of accordingly.

**(MUKTA GUPTA)**  
**JUDGE**

**FEBRUARY 05, 2015**  
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