

Respondent raised various purchase orders upon the Applicant from time to time. Pursuant to the said purchase orders and on the instructions of the Respondent, various transactions took place and goods were supplied to the Respondent by the Applicant between September-2008 and 2011, to the satisfaction of the Respondent, in respect of which invoices were raised from time to time by the Applicant on the Respondent. In turn, the Respondent from time to time made ad-hoc payments in respect of the various invoices raised by the Applicant, for which the Applicant maintained a running account. After multiple reminders, the Respondent paid an amount of Rs. 35,45,754/- on 5th August, 2011. At that stage i.e. on 5th August, 2011, as per the running account maintained by the Applicant, the Respondent was liable to pay an amount of Rs.75,14,900/-. Vide a letter dated 12th November, 2011 addressed to the Applicant, the Respondent admitted that an amount of Rs. 49,57,500/- was due and payable by it to the Applicant.

4. According to the Applicant, without prejudice to its rights to initiate separate arbitration proceedings with regard to Rs.25,57,400/-, being the amount not admitted by the Respondent as being due and payable by it to the Applicant, the Applicant filed Company Petition No. 623 of 2014 before the Delhi High Court, on the strength of the admission of the Respondent to pay Rs. 49,57,500/- to the Applicant.

5. By an Order dated 25th November, 2014 passed by the Delhi High Court in Company Application No. 2547 of 2014 in Company Petition No. 623 of 2014, it was recorded that the Respondent has handed over to the Applicant a cheque in the sum of Rs. 49,57,500/- and has agreed to pay interest thereon

aggregating to Rs.10,42,500/- within a period of 10 days from the date of the said Order. In view thereof, the Company Petition stood disposed off with liberty to the Applicant to file its claim for the balance amount before the appropriate forum.

6. The Applicant through its Advocate's letter dated 28th July, 2014, after setting out the aforesaid facts, invoked the Arbitration Clause No. 11 contained in the terms and conditions set out in the purchase orders, and appointed an Advocate to act as an Arbitrator to adjudicate the disputes and differences between the parties, and also sought concurrence of the Respondent regarding the name of the Arbitrator suggested by it, within a period of 30 days from the date of receipt of the said notice. The Advocate for the Respondent by his letter dated 3rd September, 2014, addressed to the Advocate for the Applicant denied that the Respondent is liable to pay any amount to the Applicant and further denied that any disputes and / or differences as alleged by the Applicant were required to be adjudicated and refused to give their concurrence in favour of the Arbitrator named in the Applicant's letter dated 28th July, 2014.

7. The Applicant has therefore filed the present Application seeking appointment of an Arbitrator under Section 11 of the Act. The Respondent has filed its Affidavit-in-Reply dated 28th January, 2015 stating that the Application is not maintainable since the claim of the Applicant is barred by the law of limitation. It is submitted that the Respondent has through its Advocate's letter dated 3rd September, 2014 categorically denied the Applicant's claim of Rs. 25,57,400/- . The question therefore of there being any outstanding claim as alleged by the Applicant does not arise. The Applicant has filed its Affidavit-in-Rejoinder dated 4th February, 2016,

wherein it is submitted that in view of the Respondent having made part payment on 5th August, 2011, and the account of the Respondent maintained by the Applicant being a running account, the question of the claim of the Applicant being barred by the law of limitation does not arise. It is submitted that since the Arbitration Clause was invoked vide notice dated 28th July, 2014, and the Respondent having admittedly received the said notice on 1st August, 2014, by virtue of Section 21 read with Section 43 of the Act, the arbitral proceedings commenced on 2nd August, 2014 i.e. within the limitation period. It is also submitted that in the order dated 25th November, 2014, passed by the Delhi High Court, in Company Petition No. 623 of 2014, it is recorded that the Respondent was indebted to the Applicant for a sum of Rs.75,14,900/-. However, the said Company Petition was filed by the Applicant on the basis of the admission of the Respondent that an amount of Rs.49,57,500/- is payable to the Applicant, and the Applicant was granted liberty to file its claim for the balance amount before the appropriate forum. It is therefore submitted that the objections raised by the Respondent are baseless and untenable and deserves to be rejected.

8. I have considered the submissions advanced on behalf of the Applicant and the Respondent. The fact that there exists a valid arbitration agreement between the parties is not disputed by the Respondent. It is clear from the Order passed by the Delhi High Court in Company Application No. 2547 of 2014, in Company Petition No. 623 of 2014, that out of the total claim of Rs. 75,14,900/- of the Applicant against the Respondent, the Applicant had filed a winding up Petition only for the admitted amount of Rs.49,57,500/- and the Applicant had sought liberty

to file its claim for the balance amount before the appropriate forum, which liberty was granted. It is also clear that the payment of Rs.35,45,754/- was made by the Respondent to the Applicant on 5th August, 2011. The Applicant is maintaining a running account of the Respondent. The arbitration clause was invoked vide notice dated 28th July, 2014, which was received by the Respondent on 1st August, 2014. The issue of limitation being a mixed question of law and fact, can be left to the learned Arbitrator to decide.

9. This Court therefore informed the Advocates for the parties, that the Court proposes to appoint Dr.Abhinav Chandrachud, Advocate, as the Sole Arbitrator to decide the disputes between the parties. The Advocates appearing for the parties informed the Court that they have no objection to the same. In view thereof, on 18th February, 2016 this Court passed the following Order :

“1. The learned Advocates appearing for the parties have informed the Court that the Court may appoint any Advocate as the sole Arbitrator to decide the disputes between the parties arising out of the Purchase Orders (Exhibit-A to the Application). The Court proposes to appoint Mr. Abhinav Chandrachud, Advocate. In view thereof, Mr. Abhinav Chandrachud, Advocate shall submit disclosure under Section 11 (8) read with Section 12 (1) of Arbitration and Conciliation Act, 1996.

2. The Advocates for the parties shall forward a copy of this order to Mr. Abhinav Chandrachud, Advocate.

3. All concerned to act on an ordinary copy of this order, duly authenticated by the learned Associate of this Court.

4. Stand over to 25th February, 2016.”

10. Dr.Abhinav Chandrachud, Advocate has accordingly filed his

disclosure prescribed in the Sixth Schedule of the Act. Both the parties have gone through the disclosure and have no objection to the same. In view thereof, the following Order is passed :

- i. The disputes arising out of the Purchase Orders (Exhibit-A to the Application) between the parties are referred to the sole arbitration of Dr.Abhinav Chandrachud, Advocate.
- ii. The parties shall appear before the learned Arbitrator in his Chambers, on 14th March, 2016 at 5.30 p.m. and obtain necessary directions.
- iii. The cost of the arbitration shall initially be borne by the parties equally.
- iv. All contentions of the parties are kept open.
- v. The venue of Arbitration shall be at Mumbai.
11. In view of this Order, the above Arbitration Application is disposed of.

(S.J.KATHAWALLA, J.)