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

+ CM(M) 927/2015

M/S C S T ENGINEERING

..... Petitioner

Through Mr. R.M. Sinha and Mr. Abhishal  
Srivastava, Advs.

versus

M/S TRIVENI ENGINEERING & INDS LTD

..... Respondent

Through Mr. Anunaya Mehta, Adv.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**ORDER**

% **09.03.2016**

The petitioner is aggrieved by the order dated 09.09.2015 vide which in the pending suit (suit for recovery) filed by the plaintiff, on the application filed by the defendant under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act'), the prayer made in the application was allowed and the suit was accordingly dismissed as not maintainable. The petitioner/plaintiff is aggrieved by the said order.

Record discloses that a suit for recovery of Rs.3,79,638/- had been filed by the plaintiff. In para 6 of the plaint, it had been stated that the defendant had purchased stainless steel pipes, tubes etc from the plaintiff against two purchase orders i.e. purchase orders No.4300006691 and 4300007007 dated 20.06.2011 and 06.08.2011

respectively. Para 7 specifies that against these purchase orders, the plaintiff was instructed to dispatch the goods through M/s Janta Transport Company. The defendant had received the goods but the money had not been paid insptie of legal notice having been served upon the defendant. Suit was accordingly filed.

Before entering the defence, an application under Section 8 of the said Act was filed by the defendant. Contention was that the purchase orders contained an arbitration clause and in view thereof, the suit was not maintainable and the disputes had to be referred to arbitration. Reply was filed to the pending application. Attention has been drawn to the reply. Learned counsel for the defendant rightly points out that in this reply the only contention raised before the Trial Court was that there was no dispute which requires reference to arbitration because a non-payment of a liability is not a dispute which requires any arbitration. The Trial Court had noted this submission.

Today before this Court, learned counsel for the petitioner submits that the purchase orders contained clauses 18 & 19 and attention has been drawn to the said clauses. Submission is that although clause 18 contained an arbitration clause but clause 19 also has to be read which clearly states that in case of disputes arising between the parties, the dispute will be referred to the jurisdiction of the Court at Noida, UP only. Attention has been drawn to the definition of word 'Court' contained in Section 2 (e) of the said Act. Submission being that clauses 18 & 19 had to be read in the alternate and a party

could either opt for arbitration or a civil suit could have been filed in a Court. The impugned order is an illegality. Even otherwise, the purchase order was accepted only in part and that part of the purchase order which contained arbitration clause was not accepted by the plaintiff and this is clear from the fact that this purchase order had not been signed by the plaintiff.

Needless to state that these arguments have been refuted.

Admittedly, the purchase order had not been signed by the plaintiff. Section 7 of the said Act is the provision contained in Chapter II of the said Act which defines an 'Arbitration Agreement'. Section 7 (2) states that an arbitration agreement shall be in the form of an arbitration clause. Section 7 (4) provides that the agreement is in writing if it is contained in (a) a document signed by the parties; (b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or (c) an exchange of statement of claim.

Learned counsel for the respondent rightly points out that this purchase order falls within the ambit and scope of Section 7 (4) (b). Such a document is not necessarily required to be signed. The intent of the party has to be gathered and the plaintiff having himself relied upon this purchase order, he cannot now say that he wants to back out of the arbitration clause.

Admittedly, there is an arbitration clause contained in clauses 18. It reads herein as under:-

*“ In the event of any disputes or difference arising out between the parties out of this Purchase order, they will endeavour to resolve the same amicably, failing which, the same shall be referred to Sole Arbitration of President (Sugar) of TEIL, whose decision shall be final and binding on both parties and shall not be open for them to challenge the decision taken by him before any Court of law. The Venue of all Arbitration proceedings shall be at TEIL- Noida Office alone. The cost of Arbitration Proceedings shall be borne by both the parties individually. ”*

There is no gainsaying to the settled legal proposition where there is an arbitration clause in an agreement the Court had little option but to refer the dispute to arbitration. In a judgment of Apex Court in Civil Appeal No. 2079/2015 titled M/s. Sundaram Finance Limited and another Vs. T. Thankam delivered on 20.02.2015, the observations of the Apex Court qua an application under Section 8 of the said Act was resolved as follows:-

“Once an application in due compliance of Section B of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lost of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statue, the civil court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the

special statute. The general law should yield to the special law- *generalia specialibus non derogant*. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court.”

Submission of the learned counsel for the petitioner that the purchase order has not been signed by him and could not be acted upon is an argument bereft of force. The purchase order has itself been relied upon by the plaintiff in his plaint. The question of a counter offer and non-acceptance of this offer is another argument bereft of force; this argument was not taken in the reply by the plaintiff to the application under Section 8 of the said Act; that apart, under Section 8 of the Indian Contract Act, a performance of an obligation itself amounts to an acceptance of the contract. The plaintiff has himself averred in the plaint that pursuant to the purchase order, he dispatched the goods and payment is now due from the defendant on this count.

The question of him disputing the purchase order and making a submission that the arbitration clause contained in this purchase order is not binding upon him is a malafide argument. Reliance by the learned counsel for the petitioner upon AIR 1972 Delhi 110 Union of India Vs. M/s Uttam Singh Dugal & Co. (Pvt.) Ltd. as also AIR 1984 NOC 82 (Cal.) Monoranjan Sinha and others Vs. G.C. Baretro and Others is misplaced. They do not apply to the factual matrix. They only enunciate

the settled proposition that where there is no concluded agreement between the parties, an arbitration clause cannot be relied upon. This is not so in the instant case. At the cost of repetition, the purchase order was relied upon by the plaintiff himself.

At this stage, learned counsel for the plaintiff/petitioner submits that the trial has progressed in the case and this Court may take a sympathetic approach of the matter in view of the fact that Court fee has also been paid and the written statement has been directed to be filed.

This Court is again not in agreement with this submission of the learned counsel for the petitioner. If the petitioner has approached a wrong forum, he must suffer for it. Moreover, his submission that the word 'Court' has also appeared in clause 19 refers to the Civil Court of Delhi is contrary to the clause itself; clause 19 specifically stipulates that the Court would be the Court at Noida, UP. He has admittedly not approached the Noida Court. He had approached the Court at Delhi. As rightly pointed out by the learned counsel for the respondent clause 19 refers to the seat of Arbitration and for the purpose of interim relief (as ordained under the said Act), the Court would be the Court at Noida, UP.

This petition is without any merit. Dismissed with costs quantified Rs. 10,000/-.

**INDERMEET KAUR, J**

**MARCH 09, 2016**

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