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

+ ARB.P. 22/2018

SAMSUNG INDIA ELECTRONICS PVT. LTD.

..... Petitioner

Through: Mr.Rajeev Kr., Adv.

versus

SHRI LAXMI HVAC SYSTEMS

..... Respondent

Through: Mr.Bipindra N.C., Mr.Aaditya Kumar
& Mr.Jayant Kumar Ray, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **13.07.2018**

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the two Purchase Orders dated 21.06.2016 and one 19.07.2016, two High Sea Sale Agreements dated 04.07.2016 and 06.07.2016 and the two invoices raised by the petitioner for the products supplied to the respondent under these Agreements, both dated 29.06.2016. The petitioner further claims appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to three other invoices dated 29.06.2016, 25.07.2016 and 27.07.2016.

Admittedly the Purchase Orders as also High Sea Sale Agreements do not contain any Arbitration Agreement (s) between the parties. The purported Arbitration Agreement relied upon by the petitioner is at the reverse side of the invoices raised by the petitioner on the respondent. Learned counsel for the petitioner submits that as part payments under these

invoices had been made by the respondent, the respondent by its conduct is bound by the Arbitration Clause mentioned in the invoices.

The learned counsel for the respondent on the other hand submits that the purported Arbitration Agreement(s) contained at the reverse side of these invoices cannot bind the respondent as the relationship between the parties is governed by the Purchase Orders and the High Sea Sale Agreements and not by these invoices. These invoices were raised only in terms of the above mentioned Purchase Orders and High Sea Sale Agreements and cannot bind the respondent with the Arbitration Clause mentioned on the reverse side of it. He submits that no specific attention of the respondent was drawn to this Clause and therefore the respondent has never given its consent to such Clause. The learned counsel for the respondent further submits that the alleged payments were advance payments made by the respondent before the alleged invoices were received by the respondent and therefore, cannot be read as acceptance of the Arbitration Clause by the respondent.

I have considered the submissions made by the counsels for the parties. Section 7(3) of the Act requires the Arbitration Agreement to be in writing. Section 7(4) of the Act gives the circumstances where an Arbitration Agreement can be considered to be in writing. The same is reproduced herein below:-

“7. Arbitration agreement.

- (4) An arbitration 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 including communication through electronic means which provide a record of the agreement; or*
 - (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not*

denied by the other.”

Admittedly there is no signed Arbitration Agreement between the parties. As noted above the only Clause sought to be relied upon by the petitioner is on the reverse side of the invoices raised by it on the respondent. In my view, as the relationship between the parties is governed by the Purchase Orders as also the High Sea Sale Agreements that were negotiated between the parties and which do not contain an Arbitration Agreement, by a unilateral inclusion of Arbitration Clause on the reverse side of the invoices, the petitioner cannot bind the respondent with the same.

An Arbitration Agreement has to be a Contract entered into between the parties where the parties are *ad idem* on the same. From the invoices it cannot be inferred that the parties were *ad idem* to the existence of the Arbitration Agreement between them.

This Court in its order dated 18.04.2018 passed in Arb.P. 192/2018 ***IMV India Pvt. Ltd. vs. Stridewel International through its Sole Proprietor Mr.Mahesh Chaudhri & Anr.***, has taken a similar view and rejected a petition under Section 11 of the Act where reliance was being placed by the petitioner therein on the Arbitration Clause contained in an invoice.

Learned counsel for the petitioner places reliance on the Judgment dated 19.07.2013 passed by this Court in FAO (OS) 184/2013 ***Scholar Publishing House Pvt. Ltd. vs. M/s. Khanna Traders***, to contend that in that case the Court had appointed an Arbitrator based on the Arbitration Agreement contained in the invoices. I do not find the said Judgment to be of any assistance to the petitioner. In that case there were no prior agreements between the parties. The only transaction between the parties

was evidence by the invoices that had been raised. The Court, in fact, held that there can be no strait-jacket formula to say that such invoices cannot or can amount to binding Arbitration Clauses. It depends on the facts of each case.

In the present case as the relationship of the parties is governed by a written agreement in the form of High Sea Sale Agreements, the petitioner cannot unilaterally impose an Arbitration Agreement on the respondent by including an Arbitration Clause on the reverse side of the invoices raised by it.

In view of the above the petition is dismissed, with no order as to cost.

NAVIN CHAWLA, J

JULY 13, 2018/rv