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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (COMM) 177/2017 & IA 4203/2017**

Date of Decision : 17th May, 2019

ALPNA NOELITIES MFG CO Petitioner
Through: Mr.Adarsh Verma, Adv..
versus
JINRAJ PAPER UDYOG (PVT) LTD. Respondents
Through: Mr.P.S. Bindra & Ms.Rishika
Arora, Advs..

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed challenging the Arbitral Award dated 20.09.2016 passed by the Sole Arbitrator appointed by the Paper Merchants Association.
2. The respondent had supplied the papers to the petitioner and for this purpose has raised regular invoices on the petitioner. The transaction between the parties started sometime in 2011. The invoices raised by the petitioner carried the following conditions:-

"1. I, Received the goods of this bill in good condition. 2. Goods once sold will not be taken back. 3. No complaint will be entertained after cutting and processing. 4. Our responsibility ceases the moment goods leave our premises. 5. If the payment is not received within two days or due date interest @24% p.a. will be charged. 6. We reserve the right of lien, till due are paid. 7. No claim shall be entertained if received after three days of delivery of goods. 8. In case of

any dispute including dispute of non payment in respect of this bill, the judgement given by arbitrator appointment by executive committee of Paper Merchant Association will be final and binding upon both the parties. 9. Subject to West Bengal Jurisdiction only. 10. Material delivered against cheque/post dated cheques which are good for payment as per detail.”

(Emphasis Supplied)

3. The respondent, relying upon Clause 8 of the invoices, invoked the Arbitration Agreement and filed its claim before the Sole Arbitrator appointed by the Paper Merchants Association on 30.09.2015. The respondent filed its reply refuting the said claim *inter alia* raising the plea of the absence of an Arbitration Agreement. The said objection was dismissed by the Arbitrator in his order dated 28.03.2016.

4. The Sole Arbitrator thereafter proceeded to pass the Impugned Award directing the petitioner to pay to the respondent a sum of Rs. 1,07,29,581/- alongwith future interest at the rate of 12% per annum till its realisation.

5. The learned counsel for the petitioner reiterates that there was no Arbitration Agreement between the parties. He submits that the condition no. 8 printed on the invoices was never accepted by the petitioner. He submits that this term was so minutely printed that infact the petitioner never noticed the same.

6. I am unable to agree with the submission made by the learned counsel for the petitioner. Admittedly, the transaction between the parties started sometime in 2011. The disputes between the parties arose in 2015. Over a period of four years various transactions were carried out between the parties based on similar invoices. The Arbitration Agreement is contained in front of the invoices and therefore, the petitioner cannot contend that it was not aware of the same. If the petitioner did not bother to read these conditions, it is at its own peril.

7. In ***Inox Wind Limited vs. Thermocables Limited***, (2018) 2 SCC 519, the Supreme Court has held that the exception to the rule that an Arbitration Clause in an earlier Contract cannot be incorporated by a general reference, is a reference to a standard form of Contract by trade association or a professional institution. In such a case even a general reference would be sufficient for incorporation of an Arbitration Clause.

8. In ***Govind Rubber Ltd. vs. Louids Dreyfus Commodities Asia Private Limited***, (2015) 13 SCC 477, the Supreme Court held as under:-

“15. A perusal of the aforesaid provisions would show that in order to constitute an arbitration agreement, it need not be signed by all the parties. Section 7(3) of the Act provides that the arbitration agreement shall be in writing, which is a mandatory requirement. Section 7(4) states that the arbitration agreement shall be in writing, if it is a document signed by all the parties. But a perusal of clauses (b) and (c) of Section 7(4) would show that a written document which

may not be signed by the parties even then it can be arbitration agreement. Section 7(4)(b) provides that an arbitration agreement can be culled out from an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement.

16. *On reading the provisions it can safely be concluded that an arbitration agreement even though in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication. Section 7(4)(c) provides that there can be an arbitration agreement in the exchange of statements of claims and defence in which the existence of the agreement is alleged by one party and not denied by the other. If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement. In the present day of e-commerce, in cases of internet purchases, tele purchases, ticket booking on internet and in standard forms of contract, terms and conditions are agreed upon. In such agreements, if the identity of the parties is established, and there is a record of agreement it becomes an arbitration agreement if there is an arbitration clause showing ad idem between the parties. Therefore, signature is not a formal requirement under Section 7(4)(b) or 7(4)(c) or under Section 7(5) of the Act.”*

9. In ***Scholar Publishing House Pvt. Ltd. v. M/s Khanna Traders***, MANU/DE12110/2013 this Court had also considered the issue of an Arbitration Agreement contained in the invoices raised by one party on the other and held as under:-

“8. The Court also notices that Section 7 of the Act does not compel the parties to adhere to any particular form of agreement or document. An arbitration agreement can be

inferred through a series of correspondence, or even on demur of one of the parties to an arbitration proceeding, who can otherwise object to it, on the ground of absence of agreement; if such party does not urge the contention in the reply to claim, the arbitration agreement is deemed to exist. In the present case, there is a wealth of material in the form of more than a decade of commercial relationship during which identically phrased invoices containing the arbitration stipulation were accepted and acted upon. It is not the appellant's case that the disputed invoices were the only documents containing such stipulations, which were freshly introduced."

10. In ***Shri Kailash Nath Agarwal v. M/s Aaren Exports & Ors.***, 2009 SCC OnLine 3691, this Court held that an Arbitration Agreement existed between the parties on the basis of a Clause printed on the invoice, and held as under:-

"24. Clause 5 mentioned on various invoices/bills is an arbitration agreement between the parties. As respondents have themselves admitted in their cross-objections that they had the business dealing with the appellant and have made various payments to the appellant by demand draft after purchasing the goods in question on credit basis. Since respondents admits the purchase of goods in question, it was their duty to have placed on record the invoices/bill through which they had purchased the goods from the appellant. In the absence of any document being placed by the respondents before the Arbitrator, it is apparently clear that respondents received the goods only through the invoices/bills which were filed by the appellant before the Arbitrator. Thus, there was an arbitration agreement between the parties as per clause 5 of the invoice."

11. The learned counsel for the petitioner further submits that in terms of Clause 9 printed on the invoice(s), the invoices were subject to the jurisdiction of Courts at West Bengal. He submits that therefore, even if the arbitration is to be invoked, it was to be done under the aegis of the Paper Merchants Association of the State of West Bengal.

12. The learned counsel for the respondent, however, submits that this plea was not even taken by the petitioner in its application under Section 16 or in its reply filed before the Arbitrator. He further submits that no part of cause of action arose within the State of West Bengal. The petitioner and the respondent both carried on business in Delhi and even the transaction was conducted in Delhi. He submits that therefore, Courts in State of West Bengal had no jurisdiction over the dispute and even by consent of the parties, could not have vested jurisdiction in the Courts at West Bengal.

13. I find merit in the submission made by the learned counsel for the respondent. Apart from the fact that this plea was not taken by the petitioner before the Arbitrator, it is also not denied that the entire transaction took place within the jurisdiction of this Court. The parties, even by consent cannot confer jurisdiction on the Court which otherwise does not have jurisdiction. Reference may be made to ***A.B.C Laminart (P) Ltd. and Another vs. A.P. Agencies, Salem***, (1989) 2 SCC 163, wherein Supreme Court held as under:-

“16. So long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted

the jurisdiction of the court. If under the law several courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy.”

14. The learned counsel for the petitioner further submits that the claims of the respondent were barred by Law of Limitation. He submits that the claims of the respondent were against particular invoices and therefore, the period of limitation would start from the period the said invoices become payable, as the arbitration was invoked only in 2015, the claim of the respondent towards such invoices have become barred by Limitation.

15. I am unable to agree with the submission made by the learned counsel for the petitioner. The claim of the respondent before the Arbitrator and even before this Court was that the petitioner has made part payment against such invoices, last of such payment being made on 28.11.2013. The respondent proved the said payment by way of a certificate from the bank and oral deposition of its witness. The petitioner did not enter the witness box before the Arbitrator and therefore, the plea of the respondent remained un-refuted. The

Arbitrator, based on the evidence led before him has held that the claims of the respondent were therefore within the period of limitation. I have no reason to disagree with the same.

16. In view of the above, I find no merit in the present petition. The same is dismissed, with no order as to cost.

NAVIN CHAWLA, J

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