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

% ***Date of decision: 05.01.2022***

+ ARB.P. 90/2021

SW ASTIK PIPE LTD. Petitioner
Through: Mr.Sanjay Jain, Ms.Ishita Jain &
Mr.Akash Srivastava, Advocates

Versus

A VON INDUSTRIES Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been filed under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator.
2. The averments made in the present petition are that respondent had purchased HRPO Sheets, C.R. Sheets, C.R. Strips from the petitioner and in pursuance to said business dealing, for the period between 01.04.2018 till 04.12.2019, a total amount of Rs.15,72,850/- including interest @18% per annum till 04.12.2019 for the delayed payments, is due towards respondent. According to petitioner, a legal notice dated 23.12.2019 was sent to the

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respondent invoking arbitration and for appointment of Arbitrator in terms contained in the Purchase Orders-cum-Tax Invoices, however, since respondent did not reply to the aforesaid legal notice, the present petition is filed.

3. During the course of hearing, learned counsel for petitioner has submitted that respondent has refused to accept notice of this petition and thereby, he is evading to resolve the disputes pending between the parties and so, the present petition be allowed and an Arbitrator be appointed by this Court.

4. As per office report, notice sent to respondent through ordinary post, dasti, courier, speed post, e-mail, fax and whatsapp is awaited. However, on behalf of petitioner-company, its counsel has placed on record affidavit of service dated 24.12.2021.

5. This Court has carefully gone through the contents of the affidavit of service. In Para-2 thereof it has been mentioned that the process sent to respondent has been received back with the remark “refused”. In Para-3 it has been mentioned that petitioner has served copy of petition upon the respondent through email and whatsapp. In Para-4 it has been mentioned that Clerk of the counsel had gone to the respondent-company, however, its



Director refused to accept the summons. All the above submissions have been supported by necessary annexures. Besides, along with affidavit of service, learned counsel has also placed on record pictures showing the Director of respondent-company talking on phone while the notice of the petition is lying on a table near him. Considering the aforesaid, this Court finds that respondent is fully aware of the pendency of present petition before this Court, however, has deliberately chosen not to appear before this Court.

6. In addition, this Court has also gone through the copy of Tax Invoice dated 16.12.2018, 02.03.2019 and 14.03.2019 placed on record by the petitioner, at the bottom whereof under the Remarks: Terms & Conditions: at point 2 has been mentioned that *“all disputes, touching and/or concerning this bill shall be solely resolved by an arbitrator duly appointed by the Hon’ble Delhi High Court under The Arbitration and Conciliation Act, 1996, as amended upto date or any repeal thereof. The seat of arbitration shall be Delhi and shall be solely and exclusively subject to Delhi Jurisdiction. The language of arbitration proceedings shall be English.”*

7. In view of the above, the present petition is allowed. Accordingly, **Ms. Mukti Bodh, Advocate (Mobile: 9958944220/ 9868028299)** is



appointed the sole Arbitrator to adjudicate the dispute between the parties.

8. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

9. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

10. The present petition and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 05, 2021

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