



2023:DHC:7252-DB



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

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*Date of Decision: 04.10. 2023*+ **FAO (COMM) 96/2023**

M/S INOX WIND LTD.

..... Appellant

Through: Mr. Aaditya Vijaykumar & Mr.  
Abhinandan Jain, Advs.

Versus

M/S NORTHEX LOGISTICS PVT LTD.

..... Respondent

Through: Mr. Avinash K. Trivedi, Ms. Ritika  
Trivedi, Mr. Anurag Kaushik, Mr.  
R. Nagpal & Mr. Jatin Arora, Advs.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J. (ORAL)**

1. The appellant has filed the present appeal under Section 37(1)(a) of the Arbitration & Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning an order dated 14.03.2023 (hereafter '**the impugned order**') declining to refer the parties to arbitration.

2. The respondent has filed a suit [CS(COMM) No.286/2020 captioned *M/s Northex Logistics Pvt. Ltd. v. M/s Inox Wind Ltd.*] for recovery of an amount of ₹17,31,386/- along with interest at the rate of 18% per annum.

3. It is the respondent's case that it had provided logistics services to the appellant and raised invoices for the work performed. The

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amount sought to be recovered by the respondent is in respect of sixteen unpaid invoices raised during the period 22.02.2018 to 16.03.2020.

4. The appellant had filed an application under Section 8 of the A&C Act praying that the parties be referred to arbitration. The learned Commercial Court rejected the said application in terms of the impugned order.

5. The principal controversy that needs to be addressed is whether, *prima facie*, an arbitration agreement exists between the parties which covers the disputes raised by the respondent.

6. It is the appellant's case that the invoices were raised by the respondent pursuant to Work Orders issued by the appellant from time to time and the said Work Orders included an arbitration clause.

7. The respondent disputes the same. Whilst the respondent acknowledges that the appellant had issued certain Work Orders, it disputes that those Work Orders pertained to the logistical services, which are subject matter of the suit [CS(COMM) No.286/2020].

8. The respondent claims that the unpaid invoices related to the work performed pursuant to agreements evidenced by exchange of e-mails. The respondent states that the appellant had, by e-mails, called upon it to quote the prices for performing certain services and the respondent had communicated the same by e-mails. The appellant had conveyed its acceptance by e-mails as well. The respondent states that no Work Orders were issued by the appellant in respect of those logistic services rendered by it.



9. The appellant relies on certain Work Orders, which were admittedly issued after the respondent had raised the invoices.

10. The learned Commercial Court had examined some of the invoices and had found that the said invoices did not relate to the Work Orders as claimed by the appellant. The appellant takes an exception to the said reasoning. According to the appellant, the learned Commercial Court had referred to incorrect Work Orders. The appellant claims that it had placed several Work Orders on record and each of the invoices could be traced to a Work Order.

11. We have heard the learned counsel for the parties.

12. There is merit in the appellant's contention that the logistics services which are covered under the sixteen unpaid invoices are traceable to certain Work Orders. The learned Commercial Court had thus erred in proceeding on the basis that there were no Work Order covering the services as mentioned in the unpaid invoices in question. However, it is apparent that the Work Orders relied upon by the appellant were issued after the invoices have been raised.

13. The learned Commercial Court had referred to an invoice dated 01.06.2019 relating to logistics services from "UNA TO ROHIKA" and had found that the same was not relatable to Work Order dated 29.01.2019. It is the appellant's case that the said invoice related to the Work Order dated 13.07.2020. Clearly, there is a considerable period between the issuance of the invoice and the Work Order relied upon by



the appellant. It is also important to note that the Work Order dated 13.07.2020 was issued after the respondent had served a notice of demand dated 03.07.2020.

14. It is also material to note that none of the Work Orders bear the signatures of the respondent. On a pointed query from the Court as to how were the Work Orders, which are relied upon by the appellant, communicated to the respondent, it is conceded that there is no material on record which would evidence dispatch or receipt of the said Work Orders.

15. In normal circumstances, Work Orders are issued prior to the execution of the works. However, in the present case the Work Orders, were unilaterally issued by the appellant, after the respondent had rendered the services and in most cases it had raised the invoices.

16. Section 7 of the A&C Act defines the term ‘arbitration agreement’. The said Section is set out below:

“7. **Arbitration agreement.** – (1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(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.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

17. In terms of Sub-section (3) of Section 7 of the A&C Act, an arbitration agreement is required to be in writing. Sub-section (4) of Section 7 of the A&C Act expressly provides that the agreement would be in writing if it is contained in an exchange of letters, telex, telegrams or other means of telecommunication, which provide a record of the Agreement.

18. In the present case, the arbitration agreements which are sought to be relied upon by the appellant are not document signed by both the parties. There is no material on record to show dispatch or receipt of the Work Orders relied upon by the appellant. Therefore, this Court is unable to accept that the arbitration clause contained in the said Work Orders constitutes an arbitration agreement in terms of Section 7(4)(b) of the A&C Act.

19. Considering that some of the Work Orders have been issued after the disputes have arisen, this Court is unable to accept that the appellant has *prima facie* established existence of arbitration agreement(s) covering the subject matter of the suit instituted by the respondent.



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20. In view of the above, the appellant's prayer that the parties be referred to arbitration cannot be accepted.

21. The appeal is according dismissed.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**OCTOBER 4, 2023**  
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