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

+ **FAO (COMM) 183/2022 & CM APPLs.51880-51881/2022**

RAJESH JAIN PROPRIETOR, M/S PIONEER PAPER AGENCY

..... Appellant

Through: Ms.Kirti Mewar, Advocate.

versus

M/S SHIV SHAKTI IMPEX

..... Respondent

Through: None.

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Date of Decision: 21st July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

CM APPL.51881/2022

1. Keeping in view the averments in the application, the delay in re-filing the present appeal is condoned.

2. Accordingly, the application stands disposed of.

CM APPL.51880/2022 (exemption)

3. Allowed, subject to all just exceptions.

4. Accordingly, the application stands disposed of.

FAO (COMM) 183/2022

5. Present appeal has been filed challenging the impugned order dated 6th June, 2022 passed by the learned ADJ-09, Central, Tis Hazari District Court, Delhi in ARBTN No. 347/2017, '*M/s Pioneer Paper Agency vs. Shiv*

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Shakti Impex and Another’ wherein the Appellant also seeks quashing of impugned Arbitral Award dated 16th September, 2016 passed by the learned Sole Arbitrator in ‘*M/s Shiv Shakti Impex Vs. M/s Pioneer Paper Agency.*’.

6. Learned counsel for the Appellant states that the learned Sole Arbitrator and the Trial Court have failed to appreciate that there was no arbitration agreement between the parties and therefore, the learned Arbitrator had no jurisdiction to adjudicate the dispute between the parties. She further states that the Trial Court failed to verify whether the Appellant is a member of the Paper Merchants Association (Regd.) or not.

7. Learned counsel for the Appellant has also relied upon ***Taipack Limited and Others Vs. Ram Kishor Nagarmal, 2007 (3) ARBLR 402 (Delhi)***, in order to contend absence of arbitration agreement in the instant case. Consequently, she prays that the impugned order and impugned award be set aside.

8. In response to a specific query from this Court, the Appellant has filed an affidavit of compliance dated 31st January, 2023 in which it is stated that prior to 2011, M/s Pioneer Paper Agency was a partnership firm and it was that partnership firm which was a member of Paper Merchants Association. In the affidavit, it has been averred that the partnership firm- M/s Pioneer Paper Agency, ceased to exist w.e.f. 01st April, 2011 and thereafter, the Appellant neither filed new membership for the proprietorship firm nor filed any other form or signed any Agreement/Rules and Regulations of Paper Merchants Association (regd.) Delhi.

9. In the affidavit of compliance, it has also been averred that even though the last form for membership of the Paper Merchants Association was filed in the year 2010 on behalf of the partnership firm, yet the





membership registration of the partnership is reflected in the members directory of Paper Merchants Association (regd.) Delhi, printed in the year 2017. The relevant page annexed with the said affidavit is reproduced hereinbelow:-

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	NAME & ADDRESS	OFF.	RESI.	MOB./INTER.
PGS EXIMS PVT. LTD. 352, First Floor, Main Road, Chawri Bazaar, Delhi-110006 Sh. Ram Prakash Gupta / Sh. Nitin Gupta pgsedin@gmail.com	23253565 45636165		9810515805 w 9711512227	
PHOOL CHAND VED PARNASH 3792, Gali Magazine, Churiwalan, Chawri Bazaar, Delhi-110006 Sh. Pradeep Gupta pradeepg707@yahoo.co.in	23283759		9899236889 w 9999119759	
PIONEER PAPER AGENCY 980-81, 3/7, 1st Floor, Makhi Market, Chawri Bazaar, Delhi-110006 Sh. Rajesh Kumar Jain rajeshjain19@gmail.com	23264021 23251364		9810022738 IC-1531	
PIYARE LAL BANKEY LAL 224, Chawri Bazar, Delhi-110006 Sh. Anand Parkash anandashwani333@gmail.com			9899753398 9213959197 IC-8989.8973	
PLG IMPEX 2131, 1st Floor, Tilak Bazar, Khari Baoli, Delhi-110006 Sh. Gari Raj Gupta / Sh. Mukul Gupta info@plgimpex.com	42376496 47566496		9999999342 w 9818063831 w IC-8948	
PNA AGENCIES 36, Bhagwati Market, 3795, Gali Lohewali, Chawri Bazaar, Delhi-110006 Sh. Arvind Kumar Gupta pna.agencies@gmail.com	23940053	22375413	9811254542 IC-1061	
PODDAR CARDS (P) LTD. 69, 1st Floor, Chawri Bazar, Delhi-110006 Sh. Lalit Poddar poddardesign@yahoo.com	23243600 23255866	27451202 27111202	9999350066 w IC-1866	
POOJA PAPER MART 54/16, Mangi Poona, Ankur Road, Delhi-110036 card_sandeep10@yahoo.com/poojapapermart2001@gmail.com		22825086	9811352457 w 9250200222	
POOJA PRESS & PRAKASHAN (P) LTD. K-608, 2nd Floor, Lajpat Nagar II, New Delhi-110024 poojapress@rediffmail.com	41731508 41610301	29234181	9811057519 w 9811103301	
POONAM PAPERS 3580/13, 1st Floor, P.P. Market, Chawri Bazaar, Delhi-110006			9910929530 w IC-8876	

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COURTESY BK SHOBHA CARDS PVT. LTD.

10. From the directory, it is apparent that M/s Pioneer Paper Agency through Sh. Rajesh Kumar Jain is a member of Paper Merchants Association (regd.) Delhi. The name of the other partner is not mentioned in the

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directory. No correspondence with the Paper Merchants Association with regard to wrongful inclusion of M/s Pioneer Paper Agency in the members' directory 2017 has been enclosed. In any event this document and the corresponding issue should have been raised before the Arbitral Tribunal and the Trial Court.

11. It is pertinent to mention the impugned judgment (Paras 2 and 8) repeatedly records that both the parties (including the Appellant) had admitted being members of the Paper Merchants Association (regd.) Delhi. Consequently, the affidavit of compliance dated 31st January, 2013 filed by the Appellant, to put it mildly, inspires no confidence.

12. The judgment in the case of ***Taipack Limited and Others Vs. Ram Kishor Nagarmal*** (supra) offers no assistance to the Appellant as the same is clearly distinguishable. In the said case, a member of the Paper Merchants Association had initiated the arbitration proceedings against a party who was not a member of the said Association. The respondent in the said case had also relied upon terms printed on the reverse side of the purchase order for the supply of goods which provided for adjudication of all disputes to the jurisdiction of courts at Delhi. The claimant on the other hand in the said case had relied upon terms and conditions printed on the reverse side of the invoice for supply of goods to the respondent, in order to contend amenability of dispute to arbitration in terms of the Constitutions and Regulations of the Paper Merchants Association, claimant being member of the said Association. Considering these facts, the learned Single Judge in the said case had held that there was no arbitration agreement between the parties as terms and conditions at the back of invoice unilaterally issued by the claimant would not bind the other party. Moreover, issue of purchase





order by one party and issue of invoice by another party prescribing contradictory conditions amounted to a counter-offer, thus impugning upon existence of an “agreement” in the first place. However, in the instant case, facts are distinguishable as both the parties, including the Appellant herein, are members of the Paper Merchants Association, who had agreed to be bound by the regulations of the association as if parties to a contract.¹

13. In the present case, since both the parties are members of the said Association, the dispute is between member to member and evidently is amenable to arbitration in terms of the Regulations of the Paper Merchants Association (regd.) Delhi.

14. It is also settled position of law that once an arbitral award has been confirmed in an application filed under Section 34 of the Arbitration and Conciliation Act, 1996 (‘the Act’), the Appellate Court must be extremely cautious in disturbing concurrent findings of the fact and law as they are ordinarily not amenable to interference under Section 37 of the Act. (See: *M/s. Mangalwar Filling Station v. Indian Oil Corporation Limited and Others*, 2021 SCC OnLine Del 3646)

15. Consequently, this Court is of the view that the finding of the learned Arbitrator and the Trial Court that the Appellant and Respondent were members of the Paper Merchants Association (regd.) Delhi is neither perverse nor arbitrary and calls for no interference under Section 37 proceedings.

¹ T. P. Daver vs. Lodge Victoria No. 363, S. C. Belgaum & Ors. AIR 1963 SC 1144.





16. Accordingly, the present appeal is dismissed.

MANMOHAN, J

MINI PUSHKARNA, J

JULY 21, 2023
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