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

+ **ARB.P. 316/2024**

M/S INDIA GLYCOLS LTD.

.....Petitioner

Through: **Mr. Gautam Dhamija & Mr. Parth
Dixit, Advocates**

versus

M/S AGRIMAS CHEMICALS LTD.

.....Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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15.07.2024

1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], for appointment of an arbitrator to adjudicate disputes between the parties in terms of purchase orders dated 31.03.2017, 26.05.2017 and 08.02.2018 issued by the respondent. Copies of the purchase orders have been placed on record. They contain provisions for resolution of disputes by a sole arbitrator, to be appointed by the respondent.

2. The petitioner claims to have supplied goods under the said purchase orders, and to have issued invoices which remain partially unpaid. It therefore sought to invoke arbitration by a legal notice dated 06.12.2023, claiming that there remained an outstanding amount of ₹72,64,914.76/- inclusive of interest. The said communication was served



upon the respondent at its registered office address and also at its office address [602, 6th Floor, ILD Trade Centre Sector-47, Gurugram, Haryana, 122018].

3. As the aforesaid communication failed to elicit a response, the petitioner has, therefore, approached this Court under Section 11 of the Act.

4. Notice was issued in this petition on 04.03.2024. Mr. Gautam Dhamija, learned counsel for the petitioner, has filed an affidavit of service dated 26.04.2024, in which it is stated that service was attempted at both the addresses mentioned in the memo of parties. As far as the registered office is concerned [H2, MIDC IND. Estate, Taloja, Dist. Raigadh, Maharashtra, 410208], service by speed post has been returned unserved. At the second address [602, 6th Floor, ILD Trade Centre Sector-47, Gurugram, Haryana, 122018], service was effected on 23.03.2024.

5. Despite the aforesaid, the respondent remains unrepresented. It may be noted, that service of notice at the registered office of a company is deemed to be effective service under Sections 12 and 20 of the Companies Act, 2013. Mr. Dhamija, learned counsel for the petitioner, confirms that even as of today, the registered office of the company is shown at the same address in Raigadh. As the respondent has thus been served, but remains unrepresented, the petition is taken up for hearing.

6. The petitioner has relied upon the arbitration clauses contained in the purchase orders issued by the respondent itself. Although, the documents annexed to the petition are unsigned, the respondent has not appeared to controvert the veracity of the documents.



7. The petitioner has also stated in the petition that the goods were supplied in terms of the purchase orders and accepted without demur. The validity and effectiveness of the arbitration clauses contained in invoices is established by reference to judgments of the Supreme Court in *Caravel Shipping Services (P) Ltd. v. Premier Sea Foods Exim (P) Ltd.*, [(2019) 11 SCC 461] and of this Court in *Swastik Pipe Ltd. v. Shri Ram Autotech Pvt. Ltd.*, [2021 SCC OnLine Del 3604]. In *Swastik Pipes*, an arbitrator was appointed, even when the arbitration clause was contained in documents issued by the petitioner. In the present case, the arbitration clause is, in fact, contained in documents issued by the respondent itself, which the petitioner accepts to be binding.

8. In these circumstances, I am *prima facie* satisfied with regard to the existence of the arbitration clause and to the due invocation thereof. It may be noticed that at the pre-reference stage, the Court is only required to return a *prima facie* finding, and the matter can be left for final adjudication by the learned arbitrator. It is only in cases where the Court is *ex-facie* satisfied that the disputes non-arbitrable that reference can be declined¹.

9. For the aforesaid reasons, the petition is allowed and the disputes between the parties under the purchase orders dated 31.03.2017, 26.05.2017 and 08.02.2018 are referred to arbitration under the aegis of Delhi International Arbitration Centre [“DIAC”]. DIAC is requested to nominate an arbitrator from its panel.

10. The arbitration will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.



11. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
12. As the respondent has not appeared in these proceedings, it is made clear that the respondent must be served in the arbitral proceedings, in accordance with DIAC Rules.
13. The petition stand disposed of in these terms.

PRATEEK JALAN, J

JULY 15, 2024
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¹ *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1.