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

Date of Decision: 2nd April, 2024

\+ **ARB.P. 1258/2023**

SWASTIK PIPE LTD ..... Petitioner

Through: Mr. Sanjay Jain and Ms. Ankita Kedia, Advocates (M: 7062626938).

versus

MR. SANJEEV SEHGAL PROPRIETOR OF M/S. RADIANT INDUSTRIES ..... Respondent

Through: Mr. Prashant Tripathi, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

2. Mr. Prashant Tripathi, ld. Counsel appearing for the Respondent is present in Court today. He raises an objection that the arbitration clause in the present matter is stipulated only in the terms and conditions of the invoices raised by the Petitioner, which cannot be held to be binding. According to ld. Counsel, the essential ingredients of an Arbitration Clause as required under Section 7 of the Arbitration and Conciliation Act, 1996, are not met.

3. This is a petition filed by the Petitioner-Swastik Pipe Ltd under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a sole arbitrator for adjudication of disputes. The present dispute arises out of alleged failure of payment of dues by the Respondent for purchase of HRPO Sheets, etc. *(hereinafter, 'HRPO Sheets')* from the Petitioner company. It is averred that the transaction between the parties

were governed by the arbitration clause contained in the terms and conditions of the tax invoice/s raised when the goods were supplied. Further, it is stated that the pending dues were not cleared by the Respondent despite repeated reminders.

4. It is stated in the petition that the total amount of Rs. 3,47,815/- along with interest is due on behalf of the Respondent. Further, the Petitioner states that a demand notice was sent to the Respondent on 13th April, 2023. However, the Respondent has failed to pay the outstanding dues. Hence, the present petition.

5. The Court on 8th February, 2024 observed that the disputes appear to have arisen due to change of management of the Petitioner company. Further, the Court referred the matter to the Delhi High Court Mediation and Conciliation Centre. The relevant portion of the order is extracted hereinunder: -

> *"6. Considering that in **ARB.P.1258/2023** as also the above-mentioned arbitration petitions, the dispute appears due to have arisen due to change of management, **all these matters are referred to the Delhi High Court Mediation and Conciliation Centre**. The Registry shall issue notice on the email and mobile number.*
> *7. **The parties are free to appear before the Delhi High Court Mediation and Conciliation Centre on 14th March, 2024 at 3:00 pm**."*

6. It is averred in the petition that the present dispute is to be adjudicated in terms of the arbitration clause that is present in the tax invoices which were exchanged between the parties. The tax invoice contains the arbitration clause which reads as under:-

> *"2. 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 unto date or any repeat 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 the recent judgment of this Court in ***SRF Ltd. v. Jonson Rubber Industries Ltd [Judgement dated 12th March, 2024 in ARB.P. 854/2023***] it was held that an arbitration clause contained in the tax invoices is binding between the parties. The relevant portion of the judgement is extracted hereinunder:-

> *"24. In the present case, the parties have a running account which is not in dispute. Two purchase orders may have been placed by the Respondent and various invoices may have been issued by the Petitioner. These invoices clearly state that the terms and conditions listed at the back are applicable.* ***Considering that the parties are in regular business dealings with each other, it cannot be said prima facie that the rear of the invoice was not supplied to the Respondent****.*
> *25.* ***Moreover, the two purchase orders also contain a jurisdiction clause which had the heading 'Jurisdiction for Arbitration/Dispute'. The title of this clause shows that arbitration was contemplated even in the purchase orders.*** *Further, the above clause shows that the intention of the parties is to clearly have the disputes adjudicated in Delhi and nothing more. It does not show an intention NOT to arbitrate. The intention is to the contrary that for arbitration, the jurisdiction would be Delhi. Further the invoices explicitly incorporate an arbitration clause which cannot be disputed. The same reads as under:*
> *"22. ARBITRATION AND GOVERNING LAW*

In case of any dispute or difference arising out of this transaction, either Party may refer the dispute for resolution to a Sole Arbitrator to be appointed by Seller in accordance with the provisions of Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force. Buyer does hereby unequivocally consent to appointment of such Arbitration and is barred from raising any objection for referring the matter to Arbitration, appointment of Sole Arbitrator by Seller or any other matter or thing connected therewith or incidental thereto. All proceedings in such Arbitration shall be conducted in English and place of arbitration shall be New Delhi. All disputes of the terms and conditions relating to this order or otherwise arising there from between the Seller and Buyer shall be subjected to and referred to the court Competent Jurisdiction within the limits of New Delhi only."

26. The invoices with the arbitration clause have been acknowledged and part payment has been made. The question as to whether the part-payments were towards these very invoices or not would become a question of evidence."

8. Thus, the arbitration clause in the tax invoice is binding between the parties.

9. Accordingly, since there is no resolution of the disputes, Mr. **Karandeep Singh Rekhi, Advocate (M: 9711903476),** is appointed as the Arbitrator. Considering the nature and extent of claims, the fee of the ld. Sole Arbitrator is fixed at lump sum Rs. 75,000/- to be shared equally by both the parties.

10. Today, ld. Counsel for the Respondent submits that the Petitioner

sought adjournments twice before the ld. Mediator and the mediation proceedings as directed vide order dated 8th February, 2024 is only going in ***ARB. P. 1258/2023***.

11. Ld. Counsel for the Petitioner submits that the next date before the Delhi High Court Mediation Centre is 26th April, 2024.

12. Accordingly, let the mediation proceed before the Delhi High Court Mediation and Conciliation Centre on 26th April, 2024. If the disputes are not resolved, the ld. Sole Arbitrator who is appointed today, shall enter reference.

13. Petition is disposed of with all pending applications.

14. List before the Delhi High Court Mediation and conciliation Centre on 26th April, 2024.

15. Parties to appear before the ld. Arbitrator on 23rd July, 2024.

PRATHIBA M. SINGH
JUDGE

APRIL 2, 2024
mr/rks
(corrected & released on 6th April, 2024)