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ORDER SHEET
AP-COM/581/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

H P ISPAT PRIVATE LIMITED
VS
MIR HOSSAIN

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 25th August, 2025.

Appearance:
Mr. Debraj Sahu, Adv.
Ms. Antara Biswas, Adv.
Mr. Tamoghna Saha, Adv.
…for the petitioner

Mr. Sanjay Saha, Adv.
Mr. L.R. Mandal, Adv.
Mr. Probal Sarkar, Adv.
Mrs. S.K. Kiran, Adv.
…for the respondent

The Court:

1. Affidavit of service is taken on record. Supplementary affidavit is also taken on record.
2. This is an application for appointment of an arbitrator in terms of the Dispute Resolution Clause mentioned in the invoices which were raised by the petitioner on the respondent, in respect of supply of goods/TMT bars and other metallic products. The petitioner claims to be a manufacturer and supplier of TMT bars and metallic products. The

petitioner claims that the respondent wanted dealership of the products. The parties agreed to such business transaction and it is contended by the petitioner that substantial quantity of goods were supplied to the proprietorship concern of the respondent.

3. Ms. Biswas, learned advocate submits that goods worth Rs.1,48,95,583/- were supplied to the respondent and the invoices were raised. The respondent accepted the goods on the basis of the invoices. Each of the invoices contain an arbitration clause. According to Ms. Biswas, an invoice is also a contract. The invoices contain details of the goods supplied. Acceptance of the invoices, will result in a concluded contract. It is submitted that, upon delivery of the goods and acceptance of the invoices by the respondent, payment to the extent of Rs.1,01,27,341/- had been made in a consolidated manner, treating the invoices as part of the same transactions. The dues as on the date of invocation was Rs.47,68,242/-.

4. Mr. Saha, learned advocate for the respondent opposes the prayer on the ground that no agreement had been entered into between the parties. The specific contention of Mr. Saha is that the claim is neither admissible nor arbitrable. The parties are not bound by any arbitration clause. It is further contended that, the petitioner owes money to the respondent.

5. Having considered the rival contentions of the parties, this Court finds that the invoices contain item wise details of the goods supplied, the quantity, rate, the gross amount payable, the SGST and CGST amount

etc. It is not in dispute that the respondent acted on the basis of the said invoices and made payments. The invoices were part of the same business transaction and consolidated payment was made by the respondent. Each of the invoices contain an arbitration clause. In ***M/s. Flint Group India Private Limited vs. M/s. Good Morning India Media Private Limited*** reported in ***2017 SCC Online Del 7894, Beacon Electronics vs. Sylvania & Laxman Ltd.*** reported in ***1998 SCC Online Del 16*** **and** ***Jatin Koticha vs. VFC Industries Pvt. Ltd.*** reported in ***(2007) SCC Online Bom 1092***, it had been held that an invoice could be treated as a contract between the parties if the details of the goods supplied and delivered were available from the same. Reference is also made to the decision of the Bombay High Court in ***Sanjiv Manmohan Gupta vs Sai Estate Consultants Chembur Pvt. Ltd*** reported in ***2025 SCC OnLine Bom 567,*** in this context.

6. In the matter of ***Sanjiv Manmohan (supra),*** the Bombay High Court held as follows:-

> **"10.** A Learned Single Judge (*Bharati Dangre J.*) of this Court in the case of *Bennett Coleman*[1] had occasion to consider an arbitration clause contained in tax invoices raised in the course of dealings. Taking note of the case law cited in that case, the Learned Single Judge ruled thus:
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> *27. Since in the present case,* ***it can be clearly seen that the parties have acted upon the invoices and there was no denial of the invoices raised by the applicant, the clause contained in the invoices which clearly stipulate a reference to arbitration, deserve to be construed as an arbitration clause****. The decision of this Court in case of* Concrete Additives *(supra) is delivered in the peculiar facts of the case and* ***the law being well crystallized to the effect that any document in writing exchanged between the parties which provide a record of the agreement and in***

respect of which there is no denial by the other side, would squarely fall within the ambit of Section 7 of the Arbitration and Conciliation Act, 1996 and would amount to an arbitration clause. The objection raised by the respondent thus stand overruled and by accepting that the clause contained in the tax invoice amount to an arbitration clause*, I am persuaded to exercise the powers under subsection 6 of Section 11 of the Act and pass the following order:”*

7. *[**Emphasis Supplied**]*

11. The very same principles would apply to the case at hand. The parties indeed acted upon the tax invoices. Cheques were issued. If the arbitration clause in the tax invoices was not acceptable, there would have been a resistance to it. Since there were multiple invoices, there were multiple opportunities to object to them. Instead, the invoices were indeed processed and cheques were issued. Therefore, whether the party accepting the invoice was authorised to bind the Respondent to an arbitration agreement also becomes a moot issue. The Respondent, in processing the invoices engaged with the Applicant and continued to do so. In any case, examining whether there is a prima facie existence of a formal arbitration agreement is what falls within the scope of my jurisdiction.

12. The scope of review under Section 11 is explicitly set out in Section 11(6A) of the Act. It is now trite law, with particular regard to the decisions of a seven-judge Bench in the *Interplay Judgment*[2] followed by multiple others, including *SBI General*[3] and *Patel*[4] that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has been formally executed. Even questions of existential substance is a matter that falls squarely in the domain of the arbitral tribunal, in view of Section 16 of the Act.”

7. In the matter of ***M/s. Flint Group (supra)***, the Delhi High Court held as follows:-

“6. A perusal of the invoices filed by the petitioner on which reliance is placed in the plaint would show that the details of the goods which are sought to be sold, the price, the details of the purchaser of the goods and some terms and conditions are clearly stated in the invoices. This court in the case of *Bharat Forge Ltd.* v. *Onil Gulati* (supra) held as follows:—

"11. That an invoice which incorporates the particulars of seller, purchaser, description of goods, weight, quantity, rates and price including sales tax and other dues, accompanied with additional terms as noticed in the present case would be regarded as a written contract on acceptance by the respondent is no longer res integra."

8. In the matter of ***Jatin Koticha (supra),*** the Bombay High Court held as follows:-

"**6.** Now it is clear that there is no written contract signed by both the parties relied on by the plaintiff. It is not the requirement of the law that it should be a written contract signed by both the parties. What is necessary is that the suit should be based on a written contract. That, one can find in this case, in the form of invoices which were raised on the defendants along with delivery of the goods in pursuance of each purchase order. The invoices, as stated above, contained the terms and conditions. There is a clear parole acceptance of the invoice on the part of the defendants. The defendants accepted delivery of the goods along with the invoice without any demur or suggestion that they do not accept any of the terms whether pertaining to the rate, price, quantity *etc.* It makes no difference therefore that the invoices are not signed by both the parties. I am of view that the invoices must be treated as a written contract and the suit based on such invoices is a suit based on the written contract. This view is fortified by the Madras High Court reported in The Madras Law Journal Reports 1988 page 187 (*Lucky Electrical Stores, by partner Mahendra Kumar Shah* v. *Ramesh Steel House by Partner Babulat*)[1] where the Chief Justice M.N. Chandurkar, rejected the contention similar to the one applied by the defendants in this case. The relevant observation reads thus:

"……What is necessary for the purposes of this case is that a liquidated demand in money must arise on a written contract. A written contract or a contract in writing need not always be a contract signed by both parties. The Court of Appeal in (*T.A. Rufand Company Ltd.* v. *Pauwels*)[2], (1919) 1 K.B. 660, was called upon to construe the words "contract in writing". The facts of that case were that by contract dated 28th February, 1918 Pauwels had sold to Ruf and Company a quantity of soap. The terms of the contract were contained in a sold note signed only by Pauwels. At the foot of the sold note were the words "Please confirm the above". A dispute arose under the contract as to non-delivery of part of the soap and was referred to arbitration in accordance with the Clause contained in the note. In the award made by the arbitrators there was a recital that "by a contract in writing made by Alphonse Pauwela with T.A. Ruf and Co. Ltd., dated the 28th day of February, 1918, Alphonse Pauwels contracted to sell and deliver" a certain quantity of soap to Ruf and Co. at a certain price and that a dispute had arisen which was referred to arbitration. By the award which was against the purchasers the purchasers were directed "to pay the costs of the reference, arbitration and award, including 361.15s. our fees and expenses in regard to the said arbitration, as we consider that their conduct in not confirming in writing the contract was probably the cause of the dispute". This award was sought to be set aside on the ground that "it is bad in law and shows error on its face and shows further that there was no legal contract binding on the parties". The Divisional Court ordered the award to be set aside on the ground that on the face of the award the arbitrators had treated as a contract in writing binding upon both parties that which was signed by one of the parties only and was therefore not a contract in writing. Ruf and Company appealed against this judgment. Warrington L.J., in his judgment referred to the fact that though written confirmation was not sent by the purchasers, the arbitrators had come to the conclusion that there was a parol acceptance by Ruf & Co. of the terms of the sold note, and observed as follows:—

"Taken in conjunction with the rest of the award they seem to me to indicate that the arbitrators found that Ruf and Co." had confirmed the contract though not in writing, and if so they may quite properly refer to the contract as a "contract in writing". Although the memorandum of it was signed by one party only".

9. Under such circumstances, when the invoices contain an arbitration clause and when it is an admitted position that the goods were delivered by the petitioner upon furnishing the invoices and the respondent paid a part of the amount claimed on the basis of the invoices, the arbitration clause in the said invoices, in my prima facie view would be binding between the parties. However, the respondent is at liberty to raise the question of jurisdiction of the learned arbitrator and the issue of non-arbitrability. Such objections can be decided by the learned arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996. Mr. Saha claims that the petitioner had actually defaulted in delivering the goods, inspite of receiving substantial advance payment. Such submission is also

a question of fact, which must be decided by the learned Arbitrator. Thus, the entire claim will be decided along with the objections raised by the respondent.

10. Under such circumstances, the Court appoints Mr. Farhan Gaffar, learned Advocate (Mob. No.9830179148), as the Arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his own remuneration as per the Schedule of the Act.

11. AP-COM/581/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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