IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 55 OF 2024

WITH

INTERIM APPLICATION (L) NO. 34179 of 2022

Seals Retails World Pvt. Ltd. and Ors. ***.....Petitioner***

: Versus :

Clothing Intelligence Agency ***....Respondent***

WITH

ARBITRATION PETITION NO. 56 OF 2024

WITH

INTERIM APPLICATION (L) NO. 34178 of 2022

Seals Retails World Pvt. Ltd. and Ors. ***.....Petitioner***

: Versus :

Fashionista Inc. ***....Respondent***

Mr. Satish Muley with Mr. Mosin Naik and Mr. Zhoaib Sayyed *for the Petitioner in both the Petitions.*

Mr. Udayan S. Jain with Mr. Anay Jain for the *Respondents in both the Petitions.*

CORAM : SANDEEP V. MARNE, J.

DATED : 17 NOVEMBER 2025

Oral Judgment :

1) These are petitions filed by the Petitioners under Section 34 of the Arbitration and Conciliation Act, 1996 **(Arbitration Act)** challenging the Awards of the Arbitral Tribunal dated 5 May 2022. In Arbitration Petition No. 55 of 2024, Award dated 5 May 2022 is challenged which directs Petitioners to pay to the Respondent amount of Rs.4,90,991/- along with interest at the rate of 18% per annum. In Arbitration Petition No. 56 of 2024, Award dated 5 May 2022 is under challenge which directs Petitioners to pay to the Respondents, amount of Rs.6,04,439/- along with interest at the rate of 18% per annum.

2) The dispute between the parties emanated out of transaction of purchase of fabric by Petitioners for manufacture of garments from Respondent. It is the grouse of Respondent that despite accepting delivery of the fabric, as well as tax invoices, the Petitioners failed to pay the amounts covered by the invoices. On the reverse side of the tax invoices raised by the Respondents, Condition No.7 was printed for resolution of disputes by Mumbai Textile Merchants' Mahajan. According to the Respondents, the said printed Condition No.7 constituted Arbitration Agreement between the parties and accordingly claims were filed by the Respondent before the Arbitral Tribunal which has delivered the impugned Awards. The Awards are now challenged by the Petitioners contending that there was no Arbitration Agreement between the parties.

3) Mr. Muley, the learned counsel for the Petitioner in both the Petitions would submit that the Petitioners are not members of Mumbai Textile Merchants' Mahajan. That no purchase order was placed by the Petitioners on to the Respondents and that therefore there is no question of any Arbitration Agreement between the parties. That the unilateral condition imposed by the Respondents on the Tax Invoice does not constitute a valid Arbitration Agreement. That acceptance of tax invoice would only imply admission of delivery of goods and possibly the liability to pay the a+mount of invoice. However, the same would not constitute acceptance of condition for arbitration. He would submit that the law is well settled that mere printing of condition on tax invoice does not constitute Arbitration Agreement between the parties. In support of his contention, he relies upon the following judgments:

i. ***M/s. Divya Shivlaks Impex vs. Shantilal Jamnadas Textiles (P) Ltd.***[1]

ii. ***Taipack Limited and Ors. Vs. Ram Kishore Nagar Mal***[2]

iii. ***Priknit Retails Ltd. Vs. Aneja Agencies***[3]

iv. ***Concrete Additives and Chemicals Pvt. Ltd. Vs. S N Engineering Services Pvt. Ltd.***[4]

v. ***M/s. Hetampuria Tax Fab vs. M/s. Daksh Enterprises***[5]

4) *Per contra*, Mr. Jain, the learned counsel appearing for the Respondents would submit that there is a valid Arbitration Agreement between the parties. He would submit that the tax invoices have been accepted and acknowledged by the Petitioners without raising any

1 *(1999) 2 BomCR 734*
2 *2007 143 DLT 123*
3 *OMP (COMM) 374 of 2016 decided on 22 March 2018*
4 *Arbitration Application (L) No. 23207 of 2021 decided on 17 January 2022*
5 *FOA (COMM) 169/2022 and CM Nos. 48962/2022 & 48963/2022 decided on 15 November 2022*

demur. That Petitioners never objected to the arbitration clause being printed on the tax invoice. He would therefore submit that there is a valid Arbitration Agreement within the meaning of Section 7 of the Arbitration Act. He would further submit that Petitioners have adopted a false defence of defect in the supplied fabric. That Petitioners have admittedly utilised the fabric for manufacture of garments. That therefore the challenge sought to be raised by the Petitioners to the impugned Award is clearly *mala fide*. That despite the learned Arbitrator writing three letters to the Petitioners, they failed to appear before the Arbitrator. That jurisdiction of the Arbitrator could have been challenged by the Petitioners by filing application under Section 16 of the Arbitration Act which remedy was not availed by them. He would therefore submit that Petitioners are now estopped from raising the issue of non-existence of Arbitration Agreement in the present case.

5) Rival contentions of the parties now fall for my consideration.

6) The Respondents have relied upon following Condition No.7 printed on the reverse side of the concerned tax invoices :

> **7.** If any dispute arises of this transaction the same shall be referred to Mumbai Textile Merchants' Mahajan for arbitration under its rules and regulations. The decision given thereon shall be binding upon all the parties and the Courts of Mumbai shall have sole Jurisdiction over the said arbitration proceedings.

7) On the other hand, Petitioners contend that the said printed condition cannot constitute a valid Arbitration Agreement. Therefore, short issue that arises for consideration in the present petitions is whether there was any valid Arbitration Agreement between the parties within the meaning of Section 7 of the Arbitration Act ?

8) The issue about printed condition on an invoice not constituting valid Arbitration Agreement is no more *res integra* and is covered by various judgments. It would be apposite to discuss few of them.

9) In ***Divya Shivlaks Impex*** (supra), the issue before the Division Bench of this Court was whether a condition printed on the tax invoice would constitute a valid Arbitration Agreement. In that case as well, a similar condition was imposed for resolution of disputes by arbitration conducted under the Rules of Mumbai Piece Goods Merchants Mahajan. The Division Bench held in para-16 as under:

> 16. Turning to the printed invoice, our attention was invited to one such sample invoice No. 1563 dated 15th January 1998. We have perused the original invoice of which the copy is on record. What the respondents contend is that after the details of the particulars of the goods supplied, their quality, quantity, price etc. there is a printed note on the lower portion of the invoice which reads as under:
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> > "This sale is subject to the Sale, Disputes and Arbitration Rules of Mumbai Piece Goods Merchants Mahajan."
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> Relying upon the above printed clause in the invoice, the respondents' contention is that this amounts in an agreement to refer the dispute to the Mahajan. We must hasten to add that this printed clause is not intelligible to us and, in our view, there is no clause which says that the sale was subject to the Arbitration Rules of the Mumbai Piece Goods Merchants Mahajan. It is difficult to appreciate the exact meaning of the printed words. On a plain reading of the said printed clause, in the absence of any other material to explain the said printed clause, we cannot come to the conclusion that the printed clause quoted above amounts to an agreement to refer the dispute to the arbitration of the Mahajan**. In our view, therefore, the printed clause**

> **does not amount to an agreement to refer the dispute to the arbitration of the Mahajan.**
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> *(emphasis added)*

10) In ***Taipack Limited*** (supra), the Single Judge of Delhi High Court has decided a case where there was a condition No. 4 printed on the reverse of the invoices for resolution of disputes by Paper Merchant Association, Chawri Bazar. The Delhi High Court held that such printed condition on the invoice did not constitute a valid Arbitration Agreement. Of course in ***Taipack Limited***, there was an additional factor where the purchase order contained a specific clause for non-resolution of disputes through arbitration. However, even if the said aspect is ignored, the Delhi High Court held that mere printing a condition on an invoice would not constitute a valid Arbitration Agreement between the parties. The Delhi High Court held in paras-13 to 18 as under :

> 13. In my opinion, the submission of the Petitioner that there was no existing agreement between the parties to refer the disputes arising out of their commercial relationship to Arbitration, is well founded. The arbitrator has rejected the objection as to non-existence of an arbitration agreement on the basis of the said Clause 4 printed on the reverse of the invoices etc. raised by the Respondent. The arbitrator held that since the Petitioner herein received the goods without any protest and prejudice, or without intimating any contrary intention through a letter or notice, it was not open for it to resile from the conditions printed on the bills & invoices of the Respondent herein. As per the said clause, the matter was referable to Paper Merchants Association, Chawri Bazaar, for arbitration. Consequently, according to the learned Arbitrator, an arbitration agreement existed between the parties in relation to their commercial transactions and he had jurisdiction to arbitrate the same.
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> 14. The issue that arises for consideration is whether there was an existing and enforceable arbitration agreement between the parties, to refer their disputes in relation to the contract in question to Arbitration by the Paper Merchants Association (Regd.)
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> 15. 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. It may be in the form of an arbitration clause in a contract or in the form of a separate agreement. An arbitration agreement has necessarily to be in writing. It may be contained, inter alia, in a document signed by the parties, or in an exchange of letters, telex, telegrams or any other means of telecommunication, which provide a record of the agreement.

16. In the present case, there is no arbitration agreement which could be said to be contained in a document signed by the parties. [See Section 7(4)(a) of the Act]. Therefore, one has to ascertain whether there is an arbitration agreement which could be said to be contained in exchange of letters, telex, telegram or any other means of telecommunication, which provide a record of the agreement. An "arbitration agreement" is a species of the genus, that is "Agreement". There has to be, first and foremost an agreement. For the existence of an agreement there has to be "consensus ad idem" between the parties, i.e., they should agree to the same thing in the same sense.

17. In the present case, the Petitioner herein made his offer when it placed the purchase order dated 13.2.1997 upon the Respondent which, inter-alia, contained Clauses 10 and 11 as aforesaid. Clause 10, specifically made any other terms or conditions, contained in any document of the respondents that were in addition to, or in contradiction to those contained therein, inapplicable to the contract unless they were specifically agreed to by the petitioner in writing. Clause 11 subjected all disputes to jurisdiction of Delhi Courts. The respondent acted on this offer by effecting supplies of the goods, and at the same time raised an invoice dated 6.3.1997 for Rs. 1,49,866.17 which contained condition No. 4 as extracted above.

18. What is the legal effect of the aforesaid conduct of the Respondent? In my view, when the Respondent supplied the goods in compliance of the Purchase Order, it accepted the terms and conditions stipulated therein. The mere printing of condition No. 4 on the reverse of the invoice was, at the highest, an offer made by the Respondent to the Petitioner. Unless the said offer was accepted by the Petitioner, it could not result in a binding and enforceable contract. The inclusion of terms and conditions at the back of the invoice, unilaterally issued by the Respondent while effecting delivery of the goods in terms of the Petitioners purchase order, would not bind the Petitioner. The purchase order itself made it clear that the Petitioner did not intend to refer its disputes to arbitration in respect of the resulting transaction arising out of the said purchase order. Arbitration was clearly contra indicated when the Petitioners purchase order itself stated that "Any dispute arising out of this contract shall be subject to the jurisdiction of Courts in Delhi" The Respondent was well aware that the Petitioner had shunned arbitration, yet the Respondent acted in furtherance of the said purchase order by effecting supplies.

11) The judgment of the Delhi High Court in ***Taipack*** (supra) has been followed in subsequent judgment in ***Prinkit Retails Ltd.*** (supra) in which it is held in paras-28 to 34 as under :

> 28. It is well settled that the arbitration agreement is a separate and an independent agreement, although it may be embodied in as a clause in the main agreement. In the present case, the respondent seems to have acknowledged this distinction and, therefore, had provided a separate receipt at the bottom of the invoice. This was separate from the main invoice. This receipt-cum-arbitration agreement was not executed by the parties and, thus, it is not possible to accept that an arbitration agreement existed between the parties.
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> 29. In M/s Taipack Limited and Ors. v. Ram Kishore Nagar Mal (supra), a Coordinate Bench of this Court had held that the goods supplied pursuant to an offer to purchase would conclude the contract between the parties. The arbitration clause on the reverse of the invoice would not fructify in an agreement, unless specifically accepted by the purchaser.
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> 30. In M/s Inspiration Cloths & U v. Yash Traders: A.P. No. 408/2008, decided on 22.12.2014, the Calcutta High Court also 2018:DHC:2045 O.M.P. (COMM) 374/2016 Page 13 of 15 declined to accept the existence of an arbitration agreement, which contained an invoice raised. The relevant extract of the said decision reads as under:-
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>> "According to Section 7 an arbitration agreement has to be in writing. It is said to be in writing in three circumstances stipulated in Section 7 (4) of the Arbitration and Conciliation Act, 1996. The first is if the document is signed by the parties. Secondly, if there is an exchange of documents to show a record of the agreement. Thirdly, when the agreement is pleaded in the statement of claim and not denied by the respondent.
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>> Admittedly, the bills or invoices were not signed or executed by the petitioner. Neither did they confirm the existence of the arbitration agreement in their statement of defence.
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>> Now, the question arises whether there was an exchange of documents to show formation of the agreement.
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>> I am afraid, not. The respondent unilaterally wrote on the bills that all disputes would be subject to the arbitration rules of Bharat Merchants' Chamber. There is no exchange of documents on the part of the petitioner to show acceptance of this term or clause. What is provided in Section 7 is an express acceptance of the arbitration agreement by means of telecommunication or by traditional methods of communication like letters, telex and telegrams. There is no such exchange between the parties to show acceptance of the arbitration clause by the petitioner. Acceptance of the bills by the petitioner will

not do as it is not part of the method of communication expressed in 7(4)(b). Any act to show acquiescence will not do unless it is communication of the type mentioned in 7(4)(b)."

31. In Luda Ram Ved Parkash (supra), a Coordinate Bench of this Court had accepted that a printed clause appearing in the bills was binding. The Court held that the law did not require that an arbitration agreement must be signed by the parties before the same could be considered as binding. The said decision would not be applicable in the facts of the present case. First of all, for the reason that the said decision was rendered in the context of the Arbitration Act, 1940. Section 2(a) of the Arbitration Act, 1940 merely required that an agreement must be in writing. There was no requirement that the agreement must also be signed by the parties. There is a material difference between the 1940 Act and the 1996 Act. Section 7 (4) of the Act clearly defines the parameters that must be satisfied in order for an arbitration agreement to be in writing. Thus, the decisions rendered in the context of the 1940 Act may not be applicable.

32. Secondly, in that case, the Court found that there was no dispute that the goods were sold subject to the Rules and Regulations of the Association. In the facts of the present case, there is a serious dispute as to the existence of the arbitration agreement; as stated above, the arbitration clause was required to be signed and filled in. This was admittedly not done and, therefore, it is not possible to accept that the parties had agreed to the same. In cases where there is no provision for affixing the signatures, it may be possible to conclude, from attendant circumstances, that the parties had agreed to the arbitration clause. However, where the respondent is required to sign the arbitration clause, but does not do so, it cannot be readily inferred that party had 2018:DHC:2045 O.M.P. (COMM) 374/2016 Page 15 of 15 agreed to the arbitration agreement. The facts in the present case are thus materially different from the facts in the case of Luda Ram Ved Parkash (supra).

33. The decision of the Coordinate Bench of this Court in M/s J.N. Textiles v. M/s Bon Chance & Anr. (supra) was also rendered in the context of the Arbitration Act, 1940. The decision in the case of Tikkan Lal Sewa Ram (supra) is also not applicable as, in that case, there was no dispute between the parties that an arbitration agreement existed between them.

34. In order to ascertain whether an agreement exists between the parties, it is necessary to establish that there was consensus ad idem between the parties. In the present case, it is not possible to accept that petitioner no.1 had accepted the arbitration clause printed at the bottom of the invoice, as the same was neither filled in nor signed by petitioner no.1. It is also not possible to accept that petitioner no.1 had agreed to the arbitration clause.

12) The Single Judge of this Court in ***Concrete Additives and Chemicals Pvt. Ltd.*** (supra) has also ruled that mere printed condition on tax invoice does not constitute a valid Arbitration Agreement between the parties. This Court went ahead and held that mere acceptance of tax invoice would amount to inference of delivery of goods and the liability to make payment under the invoice. However, the same would not constitute a valid Arbitration Agreement within the meaning of Section 7. This Court held in paras-3 to 5 as under :

> 3. It is on the basis of the tax invoices, the applicant is before the Court to contend that there is an arbitration agreement between the parties. Such a contention as urged on behalf of the applicant cannot be accepted as issuance of tax invoice is certainly required to be held to be an unilateral act on the part of the applicant. The contract between the parties is actually born under the purchase orders. The purchase orders do not contain or make any reference to an arbitration agreement between the parties.
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> 4. To accept the applicant's case that there is an arbitration agreement between the parties in my opinion, would be in the teeth of Section 7 of the Act which provides as to what would constitute an arbitration agreement. In the present context, it can be clearly held that there is no conscious agreement between the parties to refer the disputes for adjudication in arbitration. Merely because the tax invoices which are in response to the purchase orders provide for an arbitration, certainly such invoices do not bring about an arbitration agreement as contemplated under Section 7 of the Act.
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> 5. Mr. Menon's contention that the tax invoices have been accepted by the respondent and therefore it is required to be presumed that there is an arbitration agreement between the parties also cannot be accepted. The acceptance of the tax invoices is required to be held to be relevant accepting the delivery of the goods and the payment to be made under the invoices. Certainly it cannot be accepted that the unilateral invoices brought about an arbitration agreement between the parties as section 7 would provide.

13) Lastly, the Division Bench of Delhi High Court in ***Hetampuria Tax Fab*** (supra) has held that mere incorporation of a clause for arbitration in delivery challan would not constitute a valid and binding Arbitration Agreement between the parties. The Delhi High Court held in paras-12, 13 and 14 as under :

> 12. Sub-section (3) of Section 7 of the A&C Act expressly provides that an arbitration agreement shall be in writing. According to the appellant, the said

> condition is satisfied as the arbitration clause is set out in the Delivery Challan. There is no dispute that the clause has been set out in writing. However, this Court is unable to accept that the same was agreed to by the respondent. In order to constitute an agreement, there must be a consensus between the parties. This Court is unable to accept that the arbitration agreement had come into existence by the appellant unilaterally issuing a Delivery Challan and the respondent accepting delivery of the goods. As noted above, the respondent had accepted the goods and had signed the Delivery Challan indicating such acceptance. However, the same cannot be construed as appending the signatures to the arbitration agreement or agreeing to the arbitration clause as set out in the Delivery Challan.
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> 13. In terms of Section 7(4) of the A&C Act, an arbitration agreement may also be contained in exchange of letters, telex, telegrams and other means of telecommunication, which provide a record of the agreement. It can also be discerned by an exchange of the statement of claims and defence in which the arbitration clause is asserted by one party and not denied by the other. However, it is essential for the Court to find that the parties were *ad idem* for referring the disputes to arbitration.
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> 14. In the present case, there is no contemporaneous material to indicate that the parties had agreed that the disputes would be referred to arbitration. The appellant merely relies on the invoices and the Delivery Challan. As stated above, the invoice does not record any arbitration agreement. The Delivery *Challan* is a unilateral document, which is issued for the purposes of recording the delivery of goods. As an instrument, it does not embody the terms of the contract between the parties. Thus, unilaterally including a clause in the printed Delivery Challan would not constitute an agreement between the parties merely because the counter party had accepted the delivery of the goods.

14) The law thus appears to be fairly well-settled that mere printing of the condition on the tax invoice does not constitute existence of a valid Arbitration Agreement between the parties. Respondent has not pointed out any judgment in which contrary view is taken. It has only taken the defence of delivery of the invoices and acknowledgment thereof by the Petitioners. The mere fact that the Petitioners accepted or acknowledged the tax invoices would not mean that they agreed for resolution of disputes through the Mumbai Textile Merchants' Mahajan by arbitration. Acceptance of tax invoice would imply, at the highest, delivery of goods and acknowledgment of liability to pay the amount reflected in the invoice. The same however, would not constitute existence of a valid Arbitration Agreement.

15) In my view therefore, the arbitral proceedings are conducted in absence of existence of any valid Arbitration Agreement. The Awards are therefore liable to be set aside under Section 34 (2) of the Arbitration Act. The other issues sought to be raised by Mr. Jain are about acceptance of delivery and utilisation of fabric for manufacture of garments is something which touches upon the merits of the dispute between the parties. Since the impugned Awards are without jurisdiction, it is not necessary to enter into the aspect of merits of disputes between the parties.

16) Consequently, both the impugned Awards dated 5 May 2022 are set aside. The Arbitration Petitions are **allowed.** There shall be no order as to costs.

17) With disposal of the petitions, the pending Interim Applications do not survive. The same also stand disposed of.

NEETA SHAILESH SAWANT
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[SANDEEP V. MARNE, J.]