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

+ **ARB.P. 1048/2025**

ELECTROSTEEL CASTINGS LIMITED

.....Petitioner

Through: Ms. Shreedhar Gaggar, Advocate.

versus

NKG INFRASTRUCTURE LIMITED

.....Respondent

Through: Mr. Rishabh Rai, Ms. Payal Singh,
Ms. Shipra Bhardwaj and Ms. Riya Sehrawat,
Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

17.10.2025

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1. This petition is filed by the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of a Sole Arbitrator in respect of disputes emanating from Purchase Orders bearing nos. NKG-PRIMUS (JV)/PO/0904, NKG-PRIMUS (JV)/PO/0905, NKG-PRIMUS (JV)/PO/0906, NKG-PRIMUS (JV)/PO/0907 and NKG-PRIMUS (JV)/PO/0908, all dated 30.03.2024, issued by the Respondent in favour of the Petitioner. According to the Petitioner, despite fulfilling its obligations under the Purchase Orders, Respondent failed to clear the outstanding dues of Rs. 24,62,336/- and having no option, Petitioner sent notice invoking Arbitration on 05.05.2025 under Clause J(2) of the Purchase Orders under Section 21 of the 1996 Act, but there was no response.

2. Learned Counsel for the Respondent takes an objection to the



appointment of the Arbitrator and reference of disputes to arbitration on the ground that no live dispute exists between the parties. Conceding that liability to pay the outstanding amount is not disputed, it is urged that if liability is not disputed by one party, the only recourse open to the other party is to file a summary suit for recovery of the money due to it. In other words, the argument is that once Respondent has admitted that it owes money to the Petitioner, there is no ‘dispute or difference’ between the parties, which is a *sine qua non* for appointment of an Arbitrator and the petition deserved to be dismissed. In support of this plea, reliance is placed on the judgment of this Court in ***Maruti Udyog Limited v. Mahalaxmi Motors Ltd. & Anr., 2001 SCC OnLine Del 1291***, wherein the Coordinate Bench held that arbitration clause can be invoked only when there are differences and disputes between the parties, owing to breach of obligations under the concerned agreement and therefore if the liability to pay is admitted, arbitration clause cannot be invoked.

3. Counsel for the Petitioner submits that there is no merit in the objection raised by the Respondent and mere admission of liability by the Respondent with no payment of the amount outstanding, cannot take away the right of the Petitioner to seek appointment of Arbitrator and to support this plea, reliance is placed on the judgement of learned Single Judge of this Court in ***Aksh Optifibre Limited v. Nantong Siber Communication Co. Ltd., 2024 SCC OnLine Del 2092***, holding that if the outstanding dues are not paid by the party despite admitting the liability to pay, this itself constitutes “*difference and dispute*” and reference can be made to Arbitration. It is pointed out that the judgment was upheld by the Division Bench in ***Aksh Optifibre Limited v. Nantong Siber Communication Co.***



Ltd., 2024 SCC OnLine Del 4011, observing that non-payment of admitted liability is clearly an actionable claim and if the existence of arbitration agreement is not in dispute, party making a demand can take recourse to arbitration. Against the said judgment, SLP (C) No. 22495/2024 was dismissed by the Supreme Court on 21.10.2024. It is also urged that the learned Single Judge in the aforementioned judgment has distinguished the decision in **Maruti Udyog (supra)**, heavily relied upon by the Respondent. To buttress his submission learned Counsel also relies on the judgment of High Court of Telangana in **Dell International Services India Pvt. Ltd. v. Analogics Tech India Ltd., 2022 SCC OnLine TS 3470**.

4. Heard learned counsels for the parties and examined their rival submissions.

5. The short point arising for consideration in this petition is whether the disputes arising between the parties can be referred to arbitration in light of the objection raised by the Respondent that since liability to pay the outstanding dues of the Petitioner is admitted, no live dispute survives and *sans “disputes and differences”* Arbitrator cannot be appointed.

6. Having given my consideration to the rival submissions, I am of the view that there is no merit in the objection raised. Coordinate Bench of this Court in **Aksh Optifibre (supra)**, albeit in a petition under Section 34 of the 1996 Act held as follows:

“18. The para 3 to 6 of the judgment “Maruti Udyog Limited (supra) reads as under:—

“3. It is settled law that the arbitration clause can be invoked only when there are differences and disputes with regard to certain payments on breach of obligations of the respective parties to the terms of the agreement. However wherever there is an admitted liability, the arbitration clause cannot be Invoked. The very connotation ‘admitted liability suggests that there are no disputes or



differences with regard to the said admitted liability

4. The extracts of the letter dated 5th April, 1997, the minutes of the meeting and the filed by Mr. M.C. Mehta in his capacity as Managing Director of the defendant No. 1 company leave no manner of doubt that not only the defendant No. 1 had accepted the liability of 7.63 crores towards the plaintiff but also undertook to discharge the liability by making the payment through instalments.

5. What is material for the purpose of Section 8 of the Arbitration Act is that there should be existence of difference or disputes with regard to a particular liability arising out of the terms of the agreement. If the liability is acknowledged and admitted it does not come within the meaning and ambit of disputes and differences.

6. In view of the foregoing reasons the application under Section 8(1) of the Arbitration and Conciliation Act, 1996 cannot be allowed as arbitration clause is not invocable in respect of admitted liability.”

19. The above-reproduced judgments are distinguishable, as in both the cases applications were moved in pending suits, i.e. an application under section 34 of the Indian Arbitration Act, 1940 for staying the suit was moved in Pearl Hosiery Mills (supra) and an application under section 8 of the Arbitration and Conciliation Act, 1996 was moved in Maruti Udyog Ltd. (supra). The said applications were rejected.

20. The suits in both the afore-mentioned cases were pending, thereby implying that the petitioner could take his claims to a logical conclusion in the ongoing proceedings of getting a money decree. In the present case, what the petitioner is urging is that since the petitioner has admitted all the claims of the respondent, respondent should rest with the admissions made by the petitioner and not proceed towards obtaining a decree. That cannot be. If that were the case, then there would be no question of appointment of any arbitrator in the first place. In addition, the learned counsel for the petitioner had also given its no-objection to the appointment of the arbitrator before the Hon'ble Supreme Court.

21. Most importantly, in my view the fact that the amounts were not being paid by the petitioner in the present case, despite demand, constitutes “difference and dispute” and hence is referable to arbitration.”

7. In appeal, the Division Bench observed as under:

“12. The contention that the impugned award is liable to be set aside as there was no dispute between the parties is insubstantial. The fact that the appellant had failed and neglected to pay the amount admittedly payable to the respondent is clearly a dispute. Thus, the respondents could not be



faulted in availing of its remedies. The contention that it was not open for the appellant to invoke arbitration and the only remedy available was to file a suit is also insubstantial.

13. The non-payment of an admitted liability is clearly an actionable claim and in view of the arbitration agreement between the parties (which is not disputed), the respondent was well within its right to invoke the arbitration agreement to institute its claim.”

8. The Supreme Court dismissed the SLP against the judgment of Division Bench on 21.10.2024. It is thus clear that mere admission of liability by the Respondent will not extinguish the disputes and/or the right of the Petitioner to seek reference of the claims to arbitration. Non-payment of the outstanding dues despite demand, constitutes “*differences and disputes*” which parties envisaged would be referred to arbitration at the time of signing the agreements. In ***Aksh Optifibre (supra)***, Division Bench has observed that the fact that the Appellant failed and neglected to pay the amount admittedly payable to the Respondent, is clearly a dispute and the contention that it was not open to the Appellant to invoke arbitration and the only remedy was to file a suit, is insubstantial. Non-payment of admitted liability was clearly an actionable claim as per the Division Bench and in this light, it was held that since the Arbitration Agreement was not disputed, Respondent was well within its right to invoke the Arbitration Agreement to institute its claims. To the same effect is the judgment of High Court of Telangana in ***Dell International (supra)***.

9. In the present case, Respondent has admitted its liability to pay the outstanding dues to the Petitioner but to no avail as the dues have not been paid. Owing to the disputes having arisen and the existence of the Arbitration Agreement being undisputed between the parties, I am of the view that the disputes can be referred for adjudication to the arbitrator.



10. Accordingly, this petition is allowed directing Coordinator, Delhi International Arbitration Centre ('DIAC') to take steps to appoint a Sole Arbitrator to adjudicate the disputes between the parties. Arbitration proceedings will be held under the aegis of DIAC and as per its Rules. Fee of the Arbitrator shall be as per the fee schedule under the DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

11. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

12. It is made clear that Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.

13. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

OCTOBER 17, 2025/Arbind