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

+ **ARB.P. 1425/2024**

SWASTIK PIPE LTD.

.....Petitioner

Through: Mr. Sanjay Jain and Ms. Ipshita,
Advocates.

versus

NV NEW VALLEY HARDWARE STORE

.....Respondent

Through: Mr. Nomaan Shafi, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **05.05.2025**

I.A. 39352/2024 (delay of 6 days in refiling the petition)

1. This application is filed on behalf of the Petitioner seeking condonation of 06 days delay in refiling the present petition.
2. For the reasons stated in the application, delay of 06 days in refiling the petition is condoned.
3. Application stands disposed of.

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4. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of an Arbitrator for adjudication of disputes between the parties.
5. It is the case of the Petitioner that Respondent has been purchasing Galvanized Steel Tube from the Petitioner on a running and non-mutual



account basis against Tax Invoices raised by the Petitioner for the goods supplied. Petitioner avers that it supplied the goods as per the orders placed by the Respondent and raised invoices from time to time. *Albeit* Respondent assured the Petitioner that the entire payment would be made but it only paid a meagre amount of Rs. 2 lacs on 31.03.2022 and another sum of Rs. 1 lac on 14.07.2022 and as on date, Respondent has an outstanding liability of Rs. 28,95,009/- towards the Petitioner, including interest on delayed payment.

6. Learned counsel for the Petitioner submits that the Tax Invoice(s) incorporate an Arbitration Clause and since Respondent failed to agree to the appointment of the Sole Arbitrator despite receiving the invocation notice dated 11.02.2022, Court may appoint a Sole Arbitrator for adjudicating the disputes between the parties. It is urged that the invocation notice under Section 21 of 1996 Act was sent during Pandemic COVID-19 by e-mail on the last known e-mail id of the Respondent and the e-mail did not bounce back. Even otherwise e-mail is a recognised mode of service and even Court notices and summons are being served through the electronic mode, with advancement of technology.

7. Counsel for the Respondent opposes the petition on the ground that filing of this petition is not preceded by a valid Section 21 notice, which is a *sine qua non* for filing a petition under Section 11(6) of 1996 Act. No notice under Section 21 was received by the Respondent and in the absence of delivery of notice, Respondent was neither aware of the claims of the Petitioner nor could identify the counter claims. It is further argued that merely sending a notice under Section 21 of 1996 Act is not sufficient and receipt of the notice by the addressee of the notice is the pre-requisite for commencement of arbitration proceedings and in support, reliance is placed



on the judgments of this Court in *Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.*, 2017 SCC OnLine Del 7228, *Amit Guglani and Another v. L and T Housing Finance Ltd. Through-Managing Director and Another*, 2023 SCC OnLine Del 5206 and *Indian Spinal Injuris Centre v. Galaxy India*, 2024 SCC OnLine Del 4385. Without prejudice, it is also argued that e-mail is not an accepted mode of service for a notice under Section 21 of 1996 Act.

8. Heard learned counsels for the parties.

9. It needs no reiteration that under Section 11(6) of 1996 Act, referral Court is required to examine the existence of the Arbitration Agreement between the parties concerned. The Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning*, 2024 SCC OnLine SC 1754, held that scope of examination under Section 11(6) of 1996 Act is confined to the existence of an Arbitration Agreement on the basis of Section 7 of 1996 Act. The examination of validity of the Arbitration Agreement is also limited to the requirement of formal validity such as the requirement that Agreement should be in writing. It was further held that use of the term 'examination' under Section 11 (6-A) as distinguished from the term 'rule' under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a *prima facie* scrutiny of the existence of the Arbitration Agreement and does not include a contested or laborious enquiry which is to be left to the Arbitral Tribunal. In *Goqii Technologies Private Limited v. Sokrati Technologies Private Limited*, (2025) 2 SCC 192, the Supreme Court very recently reiterated this position and held that a detailed examination of the factual matrix etc., beyond the examination of existence of an Arbitration Agreement, is impermissible. It is equally settled that a valid invocation



notice under Section 21 must precede the filing of a petition under Section 11 of the 1996 Act as held in the judgements relied on by the counsel for the Respondent.

10. In the present case, significantly there is no denial to the existence of the Arbitration Agreement. The main plank of the argument of the Respondent is that invocation notice under Section 21 was not received by the Respondent and in any event, Section 21 notice cannot be served through electronic mode and thus this petition cannot be entertained. The document placed on record by the Petitioner along with the petition clearly evidences that invocation notice under Section 21 of 1996 Act was sent by the Petitioner through e-mail. A categorical stand is taken that the e-mail did not bounce back. Significantly, during the hearing learned counsel admits that the e-mail id is of the Respondent. Once the e-mail id is of the Respondent and the e-mail has not bounced back, it cannot be argued by the Respondent that the notice has not been delivered, which, no doubt, is a *sine qua non* for commencement of arbitral proceedings.

11. The contention that Section 21 notice cannot be sent through e-mail only deserves to be rejected. I may usefully refer to the judgement of the Supreme Court in ***Central Electricity Regulatory Commission v. National Hydroelectric Power Corporation Limited and Others*, (2010) SCC 280**, wherein *albeit* in a different context, the Supreme Court directed that in addition to traditional modes, service of notices may be effected *via* e-mail, particularly, for service of notices on Governmental agencies, recognising the need for a more efficient and technologically advanced mode of service.

12. In ***Kross Television India Pvt. Ltd. and Another v. Vikhyat Chitra Production and Others*, (2017) SCC OnLine Bom 1433**, the Bombay High



Court in the context of court notices held as follows: -

“6. I do not see what more can be done for the purposes of this Motion. It cannot be that our rules and procedure are either so ancient or so rigid (or both) that without some antiquated formal service mode through a bailiff or even by beat of drum or pattaki, a party cannot be said to have been ‘properly’ served. The purpose of service is put the other party to notice and to give him a copy of the papers. The mode is surely irrelevant. We have not formally approved of email and other modes as acceptable simply because there are inherent limitation to proving service. Where an alternative mode is used, however, and service is shown to be effected, and is acknowledged, then surely it cannot be suggested that the Defendants had ‘no notice’. To say that is untrue; they may not have had service by registered post or through the bailiff, but they most certainly had notice. They had copies of the papers. They were told of the next date. A copy of the previous order was sent to them. Defendants who avoid and evade service by regular modes cannot be permitted to take advantage of that evasion.”

13. Service of summons and court notices through e-mail and Whatsapp is now a recognized mode of service in addition to the traditional modes of speed post etc. and moving ahead and keeping pace with technological advancements, one cannot argue that mode of service should be confined to antiquated or overly formalistic methods. On the same analogy, service of a notice under Section 21 of 1996 Act thought e-mail will be valid service in the eyes of law. The added factor in favour of the Petitioner is that the invocation notice was sent on 11.02.2022 during COVID-19 period, when most of the communications were being sent through the electronic mode. It is thus held that the invocation notice was validly served on the Respondent.

14. As noted above, Respondent does not dispute the existence of Arbitration Agreement. Clause 2 is extracted hereunder for the ease of reference : -

“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 repeal 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.”

15. Accordingly, this petition is allowed. Coordinator, Delhi International Arbitration Centre (‘DIAC’) is requested to appoint an 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 DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018.

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

17. At this stage, learned counsel for the Respondent submits that the Respondent is aged 62 years and a permanent resident of Srinagar and will not be in a position to appear physically before the Arbitrator and be permitted to appear virtually before the Arbitrator. It will be open to the Respondent to make this request before the Arbitrator.

18. Petition is disposed of in the above terms.

JYOTI SINGH, J

MAY 05, 2025/RW