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

+ **ARB.P. 1772/2024**

PERMA PAPERS PVT. LTD.

.....Petitioner

Through: Mr.Anupam Dwivedi and Mr.Vikash Kr.
Sinha, Advocates

versus

KARNEX PRINTERS AND GRAPHICS AND ANR.

.....Respondents

Through: Mr.Aditya Gaur & Mr.Krishan
Bhardwaj, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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29.01.2025

1. By way of present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the '*A&C Act*'), the petitioner seeks appointment of an Arbitral Tribunal comprising of a Sole Arbitrator, to adjudicate upon the disputes that have arisen between the parties.
2. Petitioner claims to be in business of paper supply. It further claims that in pursuance of the respondent placing purchase orders for certain quantity of paper, it had supplied the same against four invoices dated 03.05.2023, 24.05.2023, 01.06.2023 and 15.06.2023. Further, e-way bills were duly generated for supply of subject goods. However, no payments were received against the goods supplied. Later, upon respondent assuring to clear outstanding dues, the petitioner again supplied the requisite quantity of paper which was duly received by respondents.



Petitioner while seeking arbitral reference, seeks to rely on the 'Terms and Conditions' mentioned in the invoices, and contends that the goods having been received by the respondents alongwith the said invoices, in absence of any protest, would imply acceptance of all terms and conditions.

3. Respondent, on the other hand, refutes the prayer for arbitral reference contending that there is no valid arbitration agreement between the parties. It contends that arbitration clause in a computer generated invoice is a unilateral document which is not binding on the respondent as it has not expressly consented to the resolution of disputes through arbitration which is evident from the fact that none of the invoices are countersigned by the respondents. As petitioner allegedly did not receive any payments under the four invoices, the respondents never agreed to the said 'Terms and Conditions' contained in the invoices and therefore, there is no question about existence of a valid arbitration agreement between the parties in terms of Section 7 of the A&C Act.

Alternatively, it is contended that the said 'Terms and Conditions' mentioned in the invoices provide for reference of disputes to 'Paper Merchant Association (Regd.) Delhi', however, the petitioner without approaching the Association has rather filed the present petition.

4. At this stage, the petitioner refers to the decision by the Constitution Bench in Cox & Kings Ltd. v. SAP India (P) Ltd., reported as **(2024) 4 SCC 1**, and submits that all contentions on the existence and validity of the Arbitration Agreement are to be looked into by the Arbitral Tribunal.

5. Notably, 'Terms and Conditions' are printed on the aforesaid invoices, Clause 2 whereof provides for reference of disputes to Sole Arbitrator, to be appointed by the *Paper Merchant Association*. The said



clause reads as under:

“2. In case of dispute of sale of Paper/Paper Board including dispute of non-payment in respect to this bill, the same shall be referred to the ‘PAPER MERCHANT ASSOCIATION (Regd.) DELHI for sole arbitration and the judgement given by the Arbitrator/Arbitrators appointed by the executive committee shall be final and binding on both the parties.”

6. Even as per the petitioner’s own understanding, the aforementioned clause binds the parties. The clause provides for the parties to approach *Paper Merchant Association* in case of dispute. Concededly, the petitioner has not approached the said Association for appointment of the Sole Arbitrator. Notably, the petitioner has not cast any doubt on the bias or impartiality of the Association.

7. In view of the above, the present petition is disposed of, however, liberty is reserved for the petitioner to approach this Court in case the executive committee of the aforesaid Association fails to appoint the Sole Arbitrator. Needless to state that this Court has not gone into the merits of the contentions of either of the parties, who shall be at liberty to urge the same before the appropriate authority.

MANOJ KUMAR OHRI, J

JANUARY 29, 2025

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