



2025:DHC:1126



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1828/2024**

Date of Decision: **17.02.2025****IN THE MATTER OF:**

MG POLYPLAST INDUSTRIES PVT LTDPetitioner

Through: Mr.Rajeev Aggarwal and Mr.
Mayank Kamra, Advs.

versus

SANEER ANANDRespondent

Through: None.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. Heard learned counsel for the petitioner.
2. The affidavit of service dated 03.01.2025, placed on record by the petitioner, reads as under:

"I, Ankit Gupta, the deponent hereinabove do hereby solemnly affirm and state hereunder:

1. I say that I am Counsel for Petitioner in the above captioned case and competent to swear & file the present affidavit.

2. I say that I have served the advance copy of Petition under Section 11 of the Arbitration and Conciliation Act, 1996 to the Respondent at plastdura@gmail.com through my email ankit.gupta@gravitaslegal.co.in vide E-mail dated 19.11.2024 at 11:11 am, I say that the said email has not

Signature Not Verified
Digitally Signed By:PRIYA
Signing Date: 21.02.2025
17:45:59

Signature Not Verified
Digitally Signed
By: PURUSHAINDRA
KUMAR KAURAV



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been returned/ bounced back to me.

*-sd-
Dependent*

Verification:

I, Ankit Gupta do hereby verify on this 19th day of November, 2024 at New Delhi that the contents of the above said affidavit are true and correct my knowledge and nothing material has been concealed there from.

*-sd-
Dependent"*

3. Mr. Rajeev Aggarwal, learned counsel for the petitioner, submits that notices were sent via speed post and courier to three addresses of the respondent available with the petitioner. He further states that one of these addresses matches the one mentioned in the invoices exchanged between the parties.
4. Additionally, he submits that the notices were also sent to the respondent's email address referenced in the invoices.
5. In view of the aforesaid and keeping in view the order passed by this Court in the case of ***Springboard Solutions Pvt ltd. v. Right Health Products Pvt. Ltd*** bearing no. ARB.P. 1962/2024, the service stands complete.
6. Moreover, Mr. Aggarwal, learned counsel for the petitioner, submits that the petitioner began supplying goods to the respondent and raised various invoices. According to him, goods worth ₹3.90 crores were supplied by the petitioner, out of which the respondent has paid ₹3.32 crores. However, he submits that since the respondent failed to pay the outstanding balance of ₹57,85,028.80, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the



Arbitration Act") on 18.09.2024.

7. Initially, a notice dated 23.07.2024 was served. Since it was not honoured, a legal notice was sent again on 18.09.2024, invoking the Arbitration Clause. As no response was received from the respondent, the petitioner has filed the present petition under Section 11 of the Arbitration Act.

8. Furthermore, learned counsel submits that all the invoices contain various terms and conditions. The terms and conditions from one of the invoices, which has been placed on record as Document No. 2, read as follows:

“Terms and Conditions:

- 1. Any additional increase in levies, taxes, cesses etc., which become applicable as on the date of dispatch of goods would be payable by the customer.*
- 2. MG Polyplast Industries Pvt. Ltd. (MG Polyplast) shall not be liable for any third party claims arising out of the use of Invoice goods. The customer shall keep MG Polyplast indemnified from / against such claim.*
- 3. Bank Charges of Rs. 500/- will be charged if cheque is returned.*
- 4 The cost of remittance, if any, will be borne by the customer. Interest will be charged @18% p.a. from the due date if the bill is not settled by due date.*
- 5. No claim will be entertained by the company for any loss arising from damage, shortage, and/or non delivery of goods as per this bill unless written intimation of such loss is given to the company within 10 days from the date of receipt of goods. In the absence of such intimation, it will be presumed that the goods have been received in good order and condition.*
- 6 In case of any dispute relating to this invoice between the MG*



Polyplast and Customer shall be referred to sole Arbitrator to be appointed by MG Polyplast Only and his decision shall be final and binding. The place of arbitration shall be at New Delhi only.

7 The Courts at Delhi alone shall be the jurisdiction to entertain any dispute between the parties.

8. The Registered Office of the Company is located at B-1/64, 1st Floor. Ashok Vihar, Phase-II. Delhi-110052”

9. According to him, Clause 6 of the Terms and Conditions clearly stipulates an Arbitration Clause. Learned counsel, therefore, contends that even in the absence of a written contract, the matter can still be adjudicated by an arbitrator to be appointed by this Court.

10. Learned counsel for the petitioner relies on the decision of this Court in ***Swastik Pipe Limited v. Shri Ram Autotech Pvt. Ltd.***¹.

11. He, further, contends that the decision in ***Swastik Pipe Limited*** has also been relied upon by this Court in ***M/s Dhawan Box Sheet Containers Pvt. Ltd. v. M/s Sel Manufacturing Co. Ltd.***².

12. I have considered the aforesaid submissions and have perused the record.

13. Clause 6 of the invoices states, *inter alia*, that any dispute relating to the invoice between MG Polyplast and the customer shall be referred to a sole arbitrator appointed exclusively by MG Polyplast, whose decision shall be final and binding. It also specifies that the place of arbitration shall be New Delhi.

14. Although there is no formal written agreement between the parties

¹ 2021 SCC OnLine Del 3604

² 2024 SCC OnLine Del 4779



containing an arbitration clause, the inclusion of such a clause in the invoices suggests an intent to resolve disputes through arbitration. The Court appointed arbitrators in both *M/s Dhawan Box Sheet Containers Pvt. Ltd.* and *Swastik Pipe Limited* based on the arbitration clauses contained in the invoices exchanged between the parties.

15. In *Swastik Pipe Limited*, the Court emphasized that the existence of an arbitration agreement can be inferred if there is sufficient material to show that the terms and conditions in the invoices were accepted and acted upon by both parties. The Court also noted that the commercial transactions between the parties, as reflected in the ledger and payments made, demonstrated their mutual understanding and acceptance of the invoice terms. It was held that while a conclusive determination of the arbitration agreement's validity requires a full examination of evidence and surrounding circumstances, such an inquiry falls outside the limited scope of this Court's jurisdiction under Section 11 of the Arbitration Act.

16. Consequently, in *M/s Dhawan Box Sheet Containers Pvt. Ltd.*, the Court followed the reasoning in *Swastik Pipe Limited* and upheld the principle that an arbitration agreement could be inferred from the conduct of the parties, leading to the appointment of an arbitrator.

17. Besides the aforesaid, the Court has considered the scope of scrutiny at the stage of Section 11 proceedings, as laid down in *Vidya Drolia v. Durga Trading Corpn*³, *BSNL v. Nortel Networks (India) (P) Ltd*⁴, and *NTPC Ltd. v. SPML Infra Ltd*⁵.

³ (2021) 2 SCC 1

⁴ (2021) 5 SCC 738

⁵ (2023) 9 SCC 385



18. The Supreme Court in *Vidya Drolia* clarified that, at the stage of proceedings under Section 11 of the Arbitration Act, the Court is required only to form a *prima facie* view of the existence of the arbitration agreement, leaving a detailed examination to the Arbitral Tribunal. This principle has been reaffirmed in subsequent cases, including *BSNL*, *NTPC Ltd.*, and discussions on the interplay between arbitration agreements under the *Arbitration Act* and the *Indian Stamp Act, 1899*. Consistently, these authorities emphasize that in cases of doubt, the default course is to refer the matter to arbitration, allowing the Tribunal to adjudicate the issue.

19. Reference can also be made to the decision of this Court in *Surya Processors Private Limited s. Shree Jai Gurudev Textile Agencies*⁶, where the Court held that at the stage of proceedings under Section 11 of the Arbitration Act, it is only required to form a *prima facie* view regarding the existence of an arbitration agreement. The Supreme Court in *Vidya Drolia* reaffirmed this principle, emphasizing that the rule for the Court in such cases is—"when in doubt, do refer." Similarly, in *SRF Limited v. Jonson Rubber Industries Limited*⁷, the Court reiterated that under Sections 8 and 11 of the Arbitration Act, unless a party establishes a *prima facie* case of the non-existence of a valid arbitration agreement, the default course is to refer the matter to arbitration. The burden of proving the absence of a valid arbitration agreement lies with the party asserting its non-existence.

20. In the instant case, it should also be noted that the parties have engaged in multiple transactions, and it is not just a single invoice but

⁶ 2022 SCC OnLine Del 984

⁷ 2024 SCC OnLine Del 1819



several invoices that unequivocally contain and reiterate the same clause.

21. In view of the aforesaid, the Court finds that the parties unequivocally agreed for ventilation of their grievance by way of Arbitration under Clause 6 of the Invoice. Since the existence of the arbitration clause is evident from a perusal of the Invoice, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*,⁸ *TRF Limited v. Energo Engineering Projects Ltd.*,⁹ *Bharat Broadband Network Limited v. United Telecoms Limited.*,¹⁰ and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899*¹¹.

22. The petitioner has also placed on record a ledger account showing multiple transactions between the parties.

23. Thus, it is evident that the parties have been in regular business dealings with each other, and it cannot be said, *prima facie*, that the invoices were not supplied to the respondent.

24. The invoices containing the arbitration clause have been acknowledged, and even part payments have been made.

25. A similar situation arose in the case of *SRF Limited*, decided by this Court on 12.03.2024.

26. In view of the aforesaid, Mr. Aditya Kashyap, Advocate (Mobile No.

⁸ (2020) 20 SCC 760

⁹ (2017) 8 SCC 377

¹⁰ 2019 SCC OnLine SC 547

¹¹ In re, 2023 SCC OnLine SC 1666.



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+91 7903148321, email ID. adityak.law@gmail.com) is appointed as the sole Arbitrator.

27. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

28. The learned arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the Arbitration Act within a week of entering on reference.

29. The registry is directed to send a receipt of this order to the learned arbitrator through all permissible modes, including through e-mail.

30. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

31. The petition stands disposed of in the aforesaid terms.

PURUSHAINDR KUMAR KAURAV, J

FEBRUARY 17, 2025

aks/sph

Click here to check corrigendum, if any

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Signing Date: 21.02.2025
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By: PURUSHAINDR
KUMAR KAURAV