IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

Present:-
Hon'ble Justice Shampa Sarkar

AP-COM 470 OF 2024

SUPER SMELTERS LIMITED

VS

UNIVERSAL CABLES LIMITED

For the Petitioner	: Mr. Kumarjit Banerjee, Adv Ms. Sanchari Chakraborty, Adv. Mr. Akanksha Chowdhury, Adv. Mr. Samriddha Saha, Adv.
For the Respondent	: Mr. Narendra Sharma Adv. Mr. Deva Anand Misra, Adv. Mr. Prashant Kr. Singh, Adv.
Hearing concluded on	: 10.06.2025
Judgment on	: 30.06.2025

Shampa Sarkar, J.

1. This is an application for appointment of an Arbitrator in terms of Clause 6 of the purchase order dated September 6, 2019. The purchase order was issued by the petitioner's establishment, namely, Jamuria Industrial Estate, Rajaram Danga, Aam Bagan, Jamuria, Burdwan. The petitioner is engaged, inter alia, in the business of manufacture of various iron alloy and steel products. The respondent is inter alia, engaged in the business of manufacture of paper insulated cables.

2. The case run by the petitioner is that, on May 31, 2019, the petitioner floated a tender, inviting quotations for design, manufacture, supply, testing

and commissioning of capacitor power factors improvement, also known as real time power factor (hereinafter referred to as capacitor panels) for its plant at Jamuria. The respondent participated in the tender and submitted its commercial offer. On August 30, 2019, the petitioner informed the respondent that the proposal/bid submitted by the respondent had been approved. Accordingly, a purchase order bearing no. P119Y-00458, dated September 6, 2019, was issued in favour of the respondent. According to the petitioner, the respondent accepted the said purchase order without any demurer or dispute.

3. The petitioner contended that the respondent acted in terms of the purchase order and issued an invoice for advance payment of 10% of the value of purchase order, amounting to a sum of Rs. 16,70,000/-. The payment was made by the petitioner on February 24, 2020. The respondent thereafter submitted its drawing and the petitioner approved the same by email dated February 7, 2020. Upon receipt of the aforementioned approval of the drawing, the respondent issued a further invoice on February 8, 2020, for a sum of Rs. 16,70,000/-, towards further payment of 10% against the acceptance of the drawing. The amount was paid by the petitioner on June 19, 2020. On October 14, 2020, the respondent further informed the petitioner that the capacitor panels were ready for dispatch. A further invoice dated October 14, 2020, for payment of 70% of the purchase order amounting to Rs. 1,46,96,000/- was raised. The amount was paid by the petitioner on January 5, 2021.

4. According to the petitioner, on January 15, 2021 the aforementioned capacitor panels were dispatched by the respondent and the same were

received on January 23, 2021. Accordingly, a 'Goods Received Note' dated January 23, 2021, was generated against the purchase order. During the trial run at the petitioner's HSM division of the Jamuria plant, various issues arose in respect of all the eight capacitor panels which had been received on January 23, 2021. On March 18, 2021, in the presence of the respondent, the petitioner tried to commence the operations of the said capacitor panels, but they were found to be malfunctioning. The issue was brought to the notice of the respondent by the petitioner and several meetings were held between the representatives of the parties between December 2, 2021 and September 16, 2022. Allegedly, the respondent assured the petitioner that the dispute would be resolved and the capacitor panels would be made functional to their optimum level, but the respondent failed to discharge its obligations under the said purchase order, by curing the defects. On the other hand, the respondent made allegations with regard to the electrical system of the plant and refused to replace the defective parts of the capacitor panels. The petitioner alleged that under the purchase order, the respondent was liable to replace 100% of the defective capacitor panels within three years of commissioning. Such term was stipulated in the guarantee clause.

5. The grievance of the petitioner was not solved till November, 2023. They did not make any effort to replace that defective capacitor panels which had been supplied. Finding no other alternative, the petitioner terminated the purchase order by a termination letter issued via email on December 14, 2023. The petitioner demanded refund of the entire consideration sum paid, amounting to Rs. 1,97,06,000/-, together with interest at the rate of 24%

per annum from January 23, 2021 till the date of actual payment. The respondent replied to the termination letter, and denied and disputed the contents thereof. On the other hand, the respondent made a demand for a further sum of money.

6. Thus, the differences arose between the parties and the petitioner invoked the arbitration clause, by a letter dated January 12, 2024. In reply to the petitioner letter dated January 12, 2024, the respondent by a letter dated February 20, 2024, raised various objections and sought to dispute the arbitration clause itself, by relying on a jurisdiction clause contained in the tax invoice dated January 13, 2021, issued by the respondent, pursuant to the purchase order. The letter issued by the respondent was a refusal to refer the dispute to arbitration as per purchase order dated September 6, 2019. The petitioner contended that the purchase order was a binding contract.

7. Thereafter, this application was filed for appointment of a sole arbitrator, in terms of the arbitration clause in the purchase order. The petitioner contended that parties submitted to Kolkata jurisdiction.

8. Mr. Kumarjit Banerjee learned Advocate for the petitioner submitted that the purchase order dated September 6, 2019 was forwarded by the petitioner to the respondent vide email dated October 10, 2019. The respondent acknowledged receipt of the email dated October 10, 2019, by its email dated October 18, 2019, without any objection to the same. On the basis of the purchase order, several invoices were raised by the respondent. Those were also paid. Such conduct of the parties would show that the entire purchase order, including the terms and conditions thereof, had been

accepted by the parties and the parties were ad idem on the issue of reference of disputes arising out of the said purchase order, to arbitration. According to Mr. Banerjee, the intention of the parties would be evident from the way they conducted themselves after the issuance of the purchase order. Proforma invoices dated October 17, 2019 and February 8, 2020, were issued by the respondent in furtherance to the steps taken under the purchase order. The subject capacitor panels were also delivered on the basis of the said purchase order. The 'Good Received Note' dated January 23, 2021, was issued in compliance of the terms and conditions of the purchase order. The petitioner was thereafter constrained to issue the termination letter. The respondent denied the allegations made by the petitioner. Only when the petitioner invoked arbitration, a frivolous and arbitrary plea was taken by the respondent with regard to non-existence of the arbitration clause in view of a jurisdiction clause in the tax invoice. The tax invoice was issued subsequently by the respondent and allegedly accepted by the petitioner. According to Mr. Banerjee, the arbitration agreement was a part of the purchase order and the same was exchanged by email. The arbitration agreement was covered by the definition of the said term under Section 7(4)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act).

9. Mr. Banerjee submitted that while the purchase order contained the commercial terms and conditions of the business, the invoice merely contained the description and price of goods. The purchase order, was a binding contract and the same would prevail over the invoice. Moreover, the disputes were with regard to non-compliance of the guarantee clause, non-

refund of the money paid in advance, non-replacement of the defective capacitor panels etc. Those issues were covered by the purchase order. The disputes arose out of breach of the terms and conditions of the purchase order and the Guarantee/warrant clause. The respondents also raised alternative claims on the basis of the purchase order. Thus it was prayed that the dispute must be referred to arbitration.

10. Mr. Sharma, learned Advocate for the respondent opposed the application on the ground that a tax invoice had been judicially held to be a binding contract and the subsequent issuance of the tax invoices was an amendment to the purchase order. Mr. Sharma submitted that the tax invoice was accepted by the petitioner and payments were made in accordance with the contents of the tax invoice. The tax invoice did not contain any arbitration clause and the jurisdiction of this court was ousted by the jurisdiction clause in the tax invoice. The clause provided that Courts at Satna, would have jurisdiction. Mr. Sharma further submitted that the purchase order was a document generated by the petitioner. The same was not signed by the respondent. The consensus and meeting of minds of the parties was absent. The intention to refer the dispute to a sole arbitrator, was thus absent. Clause 4 of the invoice disclosed that the parties had agreed that all disputes were subject to Satna jurisdiction. He submitted that as per the terms of the invoice, the jurisdiction of the civil court at Satna should have been invoked and the petitioner's remedy would be in a civil suit. Under the GST regime, all goods which were supplied, would have to be accompanied by an invoice and the buyer had an option either to accept the goods and the invoice or reject both. The petitioner did not

invoke the option to reject the goods mentioned in the tax invoice it is urged that, this court should reject the application, as the same was not maintainable in view of the absence of an arbitration agreement and in view of the exclusive jurisdiction of the civil courts at Satna to entertain any dispute arising out of the aforementioned commercial transaction. Mr. Sharma relied on the following decisions:-

(a) ***M/s. Flint Group India Private Limited vs M/s. Good Morning India Media Private Limited*** reported in ***2017 SCC Online Del 7894,***

(b) ***Beacon Electronics vs Sylvania & Laxman Ltd. reported in 1998 SCC Online Del 16,***

(c) ***Anantara Solutions Private Ltd. vs Vinculum Solutions Private Ltd. decided in O.A. No. 675 of 2017,***

(d) ***R.P. Infosystems Private Limited vs Redington (India) Limted*** reported in ***2023:CHC-OS:5132,***

(e) ***Bharat Forge Limited vs Onil Gulati*** reported in ***2005 (83) DRJ 140 and***

(f) ***Jatin Koticha vs VFC Industries Pvt. Ltd.*** reported in ***(2007) SCC Online Bom 1092***

11. Heard the learned advocates for the respective parties. The question which arises before this court is whether this court should appoint a sole arbitrator, in terms of clauses 6 of the purchase order.

12. The petitioner relied on the abovementioned transactions between the parties, exchange of email and the conduct of the parties, in order to

establish that the purchase order was duly accepted by the respondent and the terms and conditions thereof, were binding between the parties.

13. The registered office of the petitioner is in Kolkata. The terms and conditions on the basis of which the goods were supplied and invoices were raised by the respondent, were based on the purchase order, which was issued from Jamuria Burdwan.

14. The purchase order contains the billing address, the shipping address, the item details, the item code, HSN number, U.M., quantity discount rate and the material value. The total material value was for Rs. 1,67,00,000. The IGST payable was Rs. 30,06,000.00/-. The total amount payable by the petitioner was Rs. 1,97,06,000/. The commercial terms and conditions were stated in the second page of the purchase order. The general terms and conditions were stated in the third page of the purchase order, which are quoted below.

> "GENERAL TERMS:-
> 1. Time is essence of this order and delivery must be made as per delivery schedules unless otherwise deferred by us in writing.
> 2.In the event, the supplier fails to deliver the goods of the ordered quality or deliver different and /or sub-standard make/quality, the company reserves right to reject the material and inform the supplier to lift the material from our stores at his own cost. Incoming freight, if any, paid for these shall also be recovered. Breakage/loss if any during transit due to poor packing or handling shall be to supplier's account.
> 3.Please ensure that separate invoices are raised for each delivery challan/P.O. and submitted in duplicate along with delivery of the goods.
> 4. Please mention our Purchase Order No. in all your correspondence and invoices & delivery challans for prompt action,
> 5. Please ensure that your CST/GST/TIN/TAN/ECC Nos. are mentioned on your invoices,
> 6.ARBITRATION; All disputes of differences whatsoever arising between the parties out of or in relation to work/supply of work

> order/purchase order or effect to dis-contract or breach thereafter shall be settled amicable. However, if the parties are under to solve them amicable, the same shall be finalized setting by arbitration and reconciliation. The award may in pursuance thereafter shall be final and binding on the parties. All the disputer settles subject to Kolkata jurisdiction
> 7.CENVAT COPY OF INVOICE MUST ACCOMPANY the goods failing which this amount will not be paid."

15. Clause 6 provides for reference of disputes to arbitration. It states that any dispute or difference whatsoever, arising between the parties out of or in relation to the work/supply of the work order/purchase order, or effect to dis-contract or breach thereafter, shall be settled amicably, and if the parties failed to resolve the disputes, the same shall be finalised by arbitration. The award made in pursuance thereof, shall be binding. The intention of the parties to refer the dispute to arbitration is clear, although the English is slightly incorrect.

16. By email dated October 10, 2019, the petitioner forwarded the purchase order to the respondent. By an email dated October 18, 2019, the Assistant Vice President, Sales and Marketing, Capacitor Division of the respondent, thankfully acknowledged receipt of the purchase order and informed the petitioner that the company was sending a proforma invoice bearing No. 196 dated October 17, 2019, for payment of Rs. 16,70,000 being 10% of the bid amount. Request was made for release of the advance payment to enable the respondent to proceed further. It was further stated that the drawing was under preparation and would be sent shortly for approval by the petitioner. The e-mail further mentioned that the delivery should be counted from the date of receipt of the drawing approval/advance payment whichever was later. The second paragraph of the mail contains a further request to the petitioner to send the PBG format and the bank

details with the name and address of the bank, the IFSC code number, etc. in order to enable submission of the performance bank guarantee as per the purchase order. The petitioner was requested to release the advance payments, that is, 10% upon acceptance of the order and 10% against approval of drawing. Thereafter, the drawing was enclosed by the respondent in a further e-mail, for approval by the petitioner. The trail mail, annexed to the application clearly indicates that, by an e-mail dated February 7, 2020, the drawing was approved and the respondent sent a further proforma invoice bearing No. 196/1, dated February 8, 2020, for payment of a further sum of Rs. 16,70,000, after approval of the drawing.

17. It further appears that, by an e-mail dated October 14, 2020, the respondent informed the petitioner that the panels were getting ready for dispatch and the same would be dispatched within October 30, 2020. The proforma invoices for advance payment did not contain any jurisdiction clause. The 'Goods Receipt Note' was issued on January 23, 2021 by the petitioner. Thus, this court is of the view that the principal agreement entered into between the parties, is the purchase order dated September 6, 2019, which contains an arbitration clause. All steps were taken by the respondent in terms of the purchase order.

18. The commercial terms and conditions and the general terms and conditions of the agreement for goods to be supplied by the respondent, are all contained in the said purchase order. The law provides that consensus ad idem could also be inferred from the conduct of the parties. An agreement which is electronically exchanged between the parties will suffice

the requirement of law for an arbitration agreement to be recorded in writing.

19. Section 7 of the said Act is quoted below:-

> "7. Arbitration agreement.—(1) In this Part, "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.
> (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
> (3) An arbitration agreement shall be in writing. (4) An arbitration agreement is in writing if it is contained in—
> (a) a document signed by the parties;
> (b) <u>an exchange of letters, telex, telegrams or other means of telecommunication 1 [including communication through electronic means] which provide a record of the agreement; or</u>
> (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
> (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

20. The correspondences between the parties clearly indicate that the respondent acknowledged receipt of the purchase order and acted in terms thereof. The respondent did not raise any objection to the same. Rather, on the basis of the purchase order, proforma invoices were raised for advance payments. Drawings were sent to the petitioner for approval. Upon receipt of the petitioner's approval, further advance payments were claimed, which were paid by the petitioner.

21. The purchase order clearly mentioned the description of the capacitor panels. The respondent claims to have conformed to those specifications and descriptions and supplied the same. The respondent claimed full payment for the goods supplied. The respondent had also requested the petitioner to

send the PGB format so that the PGB could mention the bank's name, IFSC code, etc., which were required as per the terms of the purchase order.

22. Thus, this court has no hesitation to hold that the purchase order was the principal agreement between the parties. The intention of the parties to refer the disputes and differences arising out of the purchase order to arbitration, is available from clause 6 thereof. The tax invoice is a document of evidence for supply of goods or services and is also essential for the recipient to avail of input tax credit. The tax invoice provides the description of the goods with the specification code, quantum, total value, etc, without further specification or details.

23. The tax invoice was unilaterally raised by the respondent after having acted in terms of the purchase order. Thus, the tax invoice is an ancillary document to the main agreement i.e., the purchase order.

24. In my prima facie view, the purchase order is the main contract which contains all the terms and conditions which the parties agreed to be bound by, including the arbitration clause. The tax invoice was issued later. It contains the description the description of goods sold and the payment to be received. The invoice does not contain any arbitration clause, although the main agreement contains the same. Thus, in my prima facie view, the terms and conditions of the purchase order including the arbitration agreement will prevail over and supersede the terms and conditions of the tax invoice. The tax invoice does not mention any arbitration agreement. It only states that courts at Satna will have jurisdiction.

25. The arbitration clause is contained in the purchase order and all disputes are subject to Kolkata jurisdiction. Moreover, the documents

disclosed indicate that substantial cause of action has arisen within the jurisdiction of this court, at Jamuria, Burdwan. The jurisdiction of the civil courts at Satna, does not bind this court while deciding an application under Section 11 of the Arbitration of the said Act, for appointment of an arbitrator under clause 6 of the purchase order. Reference is made to the decision in ***Parekh Plastichem Distributors LLP vs Simplex Infrastructure Limited*** reported in ***2023 SCC Online Bom 1942, the Court held that:-***

> "**31.** In the case of Balasore Alloys Limited (Supra), the Hon'ble Supreme Court was considering a case where Arbitration Clauses were contained in the purchase orders and in an Agreement dated 31st March 2018 entered into between the parties which was referred to by one party as the "Umbrella Agreement" and by the other party as "Pricing Agreement". As can be seen from the paragraphs of the judgment quoted above, after considering the factual situation and the law, the Hon'ble Supreme Court came to the conclusion that the Arbitration Clauses in the said Agreement dated 31st March 2018 would govern the parties as there was consensus ad-idem to the terms and conditions contained therein and the said Agreement dated 31st March 2018 was comprehensive and encompassing all terms of the transactions between the parties. Applying the ratio of the said judgment to the present case, it is clear that, in the present case, as set out hereinabove, the purchase orders issued by the Respondent are comprehensive and encompass all the terms of the transaction between the parties, and therefore the Arbitration Clause contained in the said purchase orders would govern the parties and not the Arbitration Clause contained in the invoices issued by the Applicant. As held hereinabove, the same is more so because the parties have not expressly and specifically agreed that the Arbitration Clause contained in the purchase orders, which is the main agreement, would be superseded by the Arbitration Clause contained in the invoices issued by the Applicant.
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> **32.** That leaves me to consider one more argument advanced by the Applicant. It is the case of the Applicant that the purchase orders contained an Annexure, in which against the title "Other Terms", it is stated that jurisdiction would be subject to Mumbai High Court. It is the submission of the Applicant that, because of this Clause, this Court would have jurisdiction under Section 11 of the Act to appoint an Arbitrator. In the context of this

submission, the Applicant has referred to a judgment of the Hon'ble Supreme Court in the case of M.K. Abraham & Co. (Supra) and in particular to Paragraph No. 10 thereof, which reads as under:—

“10. If a contract consists of a printed form with cyclostyled amendments, typed additions and deletions and handwritten corrections, an endeavour shall be made to give effect to all the provisions. However, in the event of apparent or irreconcilable inconsistency, the following rules of construction will normally apply:

(i) The cyclostyled amendments will prevail over the printed terms;

(ii) The type-written additions will prevail over the printed terms and cyclostyled amendments;

(iii) Hand written corrections will prevail over the printed terms, cyclostyled amendments and typed written additions.

The above rules have evolved from the well known maxim of construction that “written, stamped or typed additions, when inconsistent with the printed terms, would normally prevail over the printed terms” and proceeds on the assumption that the printed form contained the original terms, and changes thereto were incorporated by the cyclostyled amendments, followed by changes by type-written additions and lastly the hand written additions. The logical explanation for such assumption is this : The printed form contains standardized terms to suit all contracts and situations. It is not drafted with reference to the special features of a specific contract. When such a standard form is used with reference to a specific contract, it becomes necessary to modify the standard/general terms by making additions/alterations/deletions, to provide for the special features of that contract. This is done either by way of an attachment of an annexure to the standard printed form, incorporating the changes, or by carrying out the required additions/alterations/deletions in the standard form itself. Such additions/alterations/deletions are done by typing/stamping/hand. We may refer to the following oft-quoted enunciation of the legal position by Lord Ellenborough in Robertson v. French [1803] 13 All ER 350 with reference to printed form of contract with hand-written additions:

……. that the words super added in writing are entitled, nevertheless, if there should be any reasonable doubt on the sense and meaning of the whole, to have a greater effect attributed to them than to the printed words, inasmuch as the written words are the immediate language and terms selected by the parties themselves for the expression of their meaning and the printed words are a general formula adapted equally to their case and that of all other contracting parties on similar occasions and subjects".

Another parallel principle that is equally relevant is that where the contract has several annexures/attachments, prepared at different points of time, unless a contrary intention is apparent, the latter in point of time would normally prevail over the earlier in point of time."

33. I am unable to accept the said submission of the Applicant. In the present case, this Court has to consider as to what is the venue of the Arbitration, and only if the venue of the Arbitration is Mumbai would this Court have jurisdiction to entertain this Application under Section 11 of the Act. Although, in the Annexure, it is stated that jurisdiction is subject to Mumbai High Court, the same is not at all in connection with the arbitration proceedings. <u>As far as Arbitration is concerned, Clause 23 of the purchase orders is very clear that the Arbitration would be at Kolkata and, in fact, Clause 24, which follows the same, provides that all transactions will be subject to the jurisdiction of the Calcutta High Court and the Courts thereunder. In this situation, it is very clear that, as far as arbitration is concerned, the parties have agreed that the venue of the arbitration shall be at Kolkata. It is also clear from Clauses 23 and 24 of the purchase orders that the parties</u> intended that the seat of the Arbitration would be Kolkata.

34. Since I have come to the conclusion that the Arbitration Clause in the purchase orders issued by the Respondent is the Arbitration Clause governing the parties, and since the said Arbitration Clause provides the venue and seat of the Arbitration as Kolkata, in the light of the law laid down by the Hon'ble Supreme Court in Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.7 the Courts at Kolkata will have jurisdiction to entertain an Application under Section 11 of the Act.

35. In these circumstances, and for all the reasons stated herein above, this Court has no jurisdiction to entertain the present Application filed under the provisions of Section 11 of the Act or appoint an Arbitrator to arbitrate upon the disputes and differences between the parties."

26. In ***Larsen & Turbo Limited represented by its Manager-Supply Chain Management/PoA vs M/s. Texmo Pipes and Products Limited, through its Managing Director*** decided in ***Arb.O.P (Com.Div.) No. 191 of 2024***, it was held as follows:-

> “**22.** The learned counsel for the respondent heavily relied upon a decision in “Aviagen India Poultry Breeding Company Private Limited versus R.Geetha Ranjani” (Arb.O.P.(Com.Div.) No.24 of 2023), wherein, a learned single Judge (Myself) of this Court, has categorically held that the arbitration Clause contained in the Invoices, would be binding on the parties. Therefore, the learned counsel for the respondent would contend that since the Invoices raised by the respondent specifically contained arbitration clause, the same would be binding on the petitioner. This decision, in the opinion of this Court, would not improve the case of the respondent since taking note of the fact that there was no arbitration clause contained in the Purchase Order, this Court held that the Invoices which contained arbitration clause, would be binding on the parties. <u>But in the present case, in the purchase orders, there is specific reference to GCC which contained arbitration clause and hence, the Invoices even though contained arbitration clause, which were raised subsequent to the Purchase Orders and as the said arbitration clause is unilateral, the same would not be binding upon the petitioner. Therefore, it can be safely concluded that the Purchase Orders would prevail over the Invoices and the parties shall abide by the terms and conditions mentioned in the Purchase Orders</u>.”

27. The jurisdiction of the referral court does not extend to holding a mini trial. A prima facie satisfaction of existence of an arbitration clause is sufficient. Reference is made to the decision of the Hon’ble Apex Court in ***Aslam Ismail Khan Deshmukh vs ASAP Fluids Private Limited and Another*** reported in ***(2025) 1 SCC 502***. The relevant part is quoted below:-

> **“50.** As evident from the aforesaid discussion and especially in light of the observations made in *Krish Spg.* [*SBI General Insurance Co. Ltd.* v. *Krish Spg.*, (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] , this Court cannot conduct an intricate evidentiary enquiry into the question of when the cause of action can be said to have arisen between the parties and whether the claim raised by the petitioner is time-barred. This has to be strictly left for the determination by the Arbitral Tribunal. All other submissions made by the parties regarding the entitlement of the petitioner to 4,00,000 and 2,00,010 equity shares in Respondent 1 company are concerned with the merits of the dispute which squarely falls within the domain of the Arbitral Tribunal.
>
> **51.** <u>It is now well-settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists — nothing more, nothing less.</u>

This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims which have been discharged through "accord and satisfaction", or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc.

52. In order to balance such a limited scope of judicial interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration."

28. In the matter of ***Adavya Projects Pvt. Ltd. vs M/s Vishal Structutals Pvt. Ltd. and Ors.*** reported in ***2025 INSC 507,*** the Hon'ble Apex Court held as follows:-

"40. Summary of Conclusions: Our legal analysis of the issues that we set out above, as well as our findings in the facts of the given appeal, can be stated as follows:

I. A notice invoking arbitration under Section 21 of the ACA is mandatory as it fixes the date of commencement of arbitration, which is essential for determining limitation periods and the applicable law, and it is a prerequisite to filing an application under Section 11. However, merely because such a notice was not issued to certain persons who are parties to the arbitration agreement does not denude the arbitral tribunal of its jurisdiction to implead them as parties during the arbitral proceedings.

II. <u>The purpose of an application under Section 11 is for the court to appoint an arbitrator, so as to enable dispute resolution through arbitration when the appointment procedure in the agreement fails. The court only undertakes a limited and prima facie examination into the existence of the arbitration agreement and its parties at this stage</u>. Hence, merely because a court does not refer a certain party to arbitration in its order does not denude the jurisdiction of the arbitral tribunal from impleading them during the arbitral proceedings as the referral court's view does not finally determine this issue."

29. The law is well settled that, the arbitrator can rule on his own jurisdiction. All objections which had been raised by the respondent before this court at the referral stage, can be raised before the learned arbitrator. The application is also allowed, leaving it open to the parties raise all questions available to them, before the learned arbitrator.

30. The decision in ***M/s. Flint Group India (supra)*** is not applicable. In the said case, the trial court converted a suit filed by the petitioner under order 37 of the Code of Civil Procedure, based on the invoices, into an ordinary suit and issued summons. The petitioner therein filed a review which was dismissed. The order of dismissal of the review was under challenge before the High Court at Delhi under Article 227 of the Constitution of India. The learned judge held that an invoice which incorporated the particulars of the seller, purchaser, description, weight, quantity, etc., including the sales tax and other dues, would be regarded as a written contract. Thus, it was held that the invoice could be treated as a contract, for filing of a suit under order 37 of the Code of Civil Procedure. However, it was made clear by the court that, the right of the defendant to defend the suit would be decided independently, without being influenced by the said order. The decision was not on the issue as to whether a purchase order which contained an arbitration clause and all other terms and conditions arising out of or relating to the commercial transaction entered into between the parties, would be superseded by a tax invoice and whether the terms and conditions of the tax invoice would prevail over to the purchase order. ***Jatin Koticha (supra)*** is also a decision on institution of

summary suits under order 37 of the Code of Civil Procedure. The decision was as hereunder:-

> "**8.** Besides above, the facts of the present case indicate that the suit must be treated as a summary suit since it is based on an enactment. In this case the facts clearly show that the goods were delivered by the plaintiff to the defendants and the defendants enjoyed the benefit of that, therefore they are liable under section 70 of the Contract Act to pay compensation in respect of such goods to the plaintiff. Section 70 reads as follows:
>
> > "Obligation of person enjoying benefit of non-gratuitous act.- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

31. ***Bharat Forge Limited (supra)*** is once again a decision on whether the application for leave to contest filed by the defendant in a suit under Section 37 of the Code of Civil Procedure, disclosed a triable issue, so as to entitle the defendant to defend the suit. The Hon'ble Apex Court was of the view that an invoice which incorporated the particulars of a seller, purchaser, description of goods, quantity, rate, type, etc. along with additional terms, would be taken as a written contract. The contention of the defendant that the suit based on invoices was not maintainable under summary procedure, was not accepted.

32. The defendant's contentions were rejected on the ground that there was nothing on record which would show that the defendant had, at any stage disputed his liability. Rather, the cheques issued in part payment were dishonoured, for which the defendant issued fresh cheques. There was nothing to support the defendant's contention that the acknowledgement of liability as recorded in the letter dated December 19, 2000 was false or

forced. Thus, the Apex court disallowed the defendant to defend the suit. The decision of a coordinate bench in ***R.P. Infosystems (supra)*** laid down certain principles which are quoted below:-

> “40. The principles which emerge from the aforesaid discussion on law and facts have been summarised below:
>
> a. Under Section 7 of the Act, there is no standard format prescribed for an arbitration agreement. Parties can draft one as per their own convenience and requirements. As long as the said clause fulfils the requirements contained under Section 7 of the Act, it would constitute a valid arbitration agreement.
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> b. Words which have been used in an arbitration clause must be "words of choice and determination" to refer the disputes between the parties to arbitration and not words of mere possibility.
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> c. While adjudicating the validity of an arbitration agreement, the courts must also take into account the intent of the parties and not just the mere wordings of the arbitration agreement. The intent of the parties can be inferred from the conduct of the parties, and the commercial relationship that exists between them.
>
> d. Parties can mould and shape the arbitration agreement in whichever manner they prefer, as long as they act within the confines of Section 7 of the Act. Party autonomy is the cardinal principle of arbitration, and even an arbitration clause typed on the overleaf of an invoice can be considered a valid one, if certain requirements are met. If parties act on the invoices raised, and do not raise any demur or register any opposition to the clauses contained in such invoices, they will be bound by them.
>
> e. For interpreting an agreement as an arbitration agreement, courts have to first ascertain whether or not there is consensus ad idem between the parties.
>
> f. Furthermore, If courts at any particular place have been granted exclusive jurisdiction in an arbitration agreement, all other courts will be barred from hearing any application in relation to any proceedings arising out of such an arbitration agreement even if the words "exclusive", "exclusive jurisdiction", "alone", "only" have not been used in an arbitration agreement.
>
> Directions
> 41. In light of the aforesaid discussion, this Court concludes that since exclusive jurisdiction to deal with all the matters, including those arising out of the arbitration proceedings between the parties has been conferred upon the courts in Chennai, the

> instant Section 34 application is not maintainable before this Court."

33. The arbitration clause in the purchase order will bind the parties, in my prima facie view. The purchase order is an all-encompassing agreement. The tax invoice does not contain an arbitration clause. It does not mention that the purchase order has been superseded. The tax invoice is signed by the respondent alone. In any event, the issue of novation of the purchase order will be decided by the learned Arbitrator. The arbitrator can rule on his own jurisdiction and thus, decide the arbitrability of the dispute, if raised.

34. The dispute is referred to the sole Arbitrator. Mr. Amitesh Banerjee, learned senior Advocate is appointed as the sole arbitrator, to arbitrate upon the disputes between the parties. The appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act and the learned Arbitrator will fix his own remuneration, in accordance with the schedule of the Act.

35. AP-COM 470 OF 2024 is accordingly allowed.

36. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(**Shampa Sarkar, J.**)