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

% **Date of Decision: 07th May, 2026**

+ ARB.P. 217/2026

SWASTIK PIPE LTD

.....Petitioner

Through: Mr. Sanjay Jain, Ms. Kanika Sharma,
Advocates (M:9999477509)

versus

TATA PROJECTS LIMITED

.....Respondent

Through: Mr. Shivang Singh, Ms. Harshita
Singh, Mr. Pulin Kumar, Ms. Paridhi
Rungta, Advocates (M:9999920704)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. (Oral):

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), for appointment of an Arbitrator for adjudication of disputes between the parties, arising out of the Tax Invoices dated 10th April, 2019 and 12th April, 2019 ("Tax Invoices").
2. As per the facts on record, the petitioner since the year 2018 has been supplying Steel Tubular Poles Black to the respondent, and payments have been made by the respondent towards the same on a running account basis.
3. In pursuance to the parties having a running account, part payments were being made by the respondent towards the various invoices that were being raised by the petitioner for the supply of the goods. Thus, a principle amount of Rs. 8,03,807/- is due with respect to the Tax Invoices in question, upon which, taking into account the part payments and interest for the period



of non-payment, i.e., 20th September, 2018 till 31st March, 2025, a total outstanding amount of Rs. 38,54,568/- is due against the goods supplied and delivered to the respondent during the aforesaid period.

4. It is noted that disputes arose between the parties on account of non-payment by the respondent for the goods supplied by the petitioner, therefore, the petitioner issued Debit Notes dated 31st May, 2024 and 31st March, 2025, seeking payment of outstanding dues towards the Tax Invoices.

5. Subsequently, as no payment was made by the respondent, therefore, the petitioner issued Legal Notice dated 07th June, 2024, calling upon the respondent to pay the outstanding dues along with interest or in the alternative appoint an Arbitrator. Further, the said Notice was duly served upon the respondent, and a Reply dated 09th July, 2024 was filed by the respondent, denying the validity of the Legal Notice for the purposes of invoking arbitration.

6. This Court notes that the respondent has filed a reply to the present petition raising various objections towards the maintainability of the petition on the ground of the same being barred by limitation.

7. In this regard, learned counsel for the respondent submits that the present petition has been filed in respect of claims which are *ex-facie* barred by limitation, on the ground that the right of the petitioner would accrue from the date of issuance of the Tax Invoices, therefore, as per the Limitation Act, 1963, the period of limitation of three years already stands expired.

8. Learned counsel for the respondent further submits that the present petition is defective on account of filing with incomplete documents and for



not placing on record the underlying contract, i.e., Purchase Order executed between the parties.

9. It is also the case of the respondent that the notice invoking arbitration does not constitute a proper notice as the said notice does not disclose the factual or contractual basis of the claim and contains incorrect statements regarding the transactions between the parties.

10. *Per Contra*, learned counsel for the petitioner submits that the scope of examination by this Court under Section 11 of the Arbitration Act is limited, and the Court is only required to examine the *prima facie* existence of an arbitration agreement, whereas, the respondent is attempting conduct a mini trial with regards to questions which are disputed, and therefore, is under the purview of an Arbitral Tribunal.

11. I have heard learned counsel for the parties and perused the record.

12. The first objection raised by the respondent is that the present petition is fundamentally defective as the petitioner has deliberately suppressed to place before this Court, the governing contractual framework under which the supplies were made. However, in this regard, it is to be noted that it is the clear submission on behalf of the petitioner that there is no other separate contract between the parties and that the tax invoices which contain the arbitration clause, were raised on account of the purchase order having been placed with the petitioner. This Court further notes that though objection in regard to purchase order has been raised by the respondent, however, no such document has been placed on record before this Court.

13. At this stage, this Court notes that both the Tax Invoices have an Arbitration Clause, i.e., Clause 2. The same is reproduced as under:

“xxx xxx xxx



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.

xxx xxx xxx”

14. Perusal of the aforesaid Arbitration Clause clearly shows that there is a valid Arbitration Agreement between the parties, whereby, the parties have agreed that the disputes shall be settled by arbitration, in accordance with the provisions of Arbitration Act. Further, the seat of arbitration shall be at Delhi, and the arbitrator is to be appointed by this Court.

15. Though, the respondent has raised an objection that the said clause cannot be a valid arbitration clause between the parties as the same is a Tax Invoice raised by the petitioner in the ordinary course of commercial dealings, however, the said contention cannot be accepted, as the parties have had a continuous business relation continuing for several years, wherein, various invoices have been raised by the petitioner and the same have been accepted by the respondent, towards which payments have also been made by them.

16. In this regard, reference be made to the judgment in the case of *Swastik Pipe Ltd. Versus Dimple Verma, 2022 SCC OnLine Del 5148*, wherein, it was held as follows:

“xxx xxx xxx

8. Having heard the learned counsel for the parties, the issue which arises is, whether the tax invoice stipulating an arbitration clause as referred to above can bind the parties and consequently the dispute inter-se be referred to arbitration. The issue is no more res-integra in view of the Judgment of the Division Bench of this court in the case Scholar Publishing House Pvt. Ltd. (supra), wherein this Court in paragraphs 5 and 6 held as under.....

xxx xxx xxx



11. In the case in hand, it is not disputed by the learned counsel for the respondent that it had earlier received similar tax invoices from the petitioner against which the payments have been made to the petitioner. Leaned counsel for the petitioner has not disputed that the tax invoices for which claim has been made has not been received by the respondent. If that be so, respondent cannot disown the clear stipulation in the tax invoice with regard to any dispute being referred to arbitration. Even the Coordinate Bench of this Court in Swastik Pipe Ltd. (supra) in a very detailed Judgment by referring to the various judgments including Scholar Publishing House Pvt. Ltd. (supra), Lewis W. Fernandes (supra) and other judgments has in Para 16 held as under and refer the matter for arbitration by appointing an arbitrator:

“16. As noted above, SRAPL has elected to stay away from the present proceedings. Despite service of notice, they have chosen not to appear, for reasons best known to them. They have not filed a reply to deny the assertion, both in response to the legal notice invoking arbitration, as well as to the present petition. The consequence of such non-appearance is that the assertion of existence of the arbitration agreement is unrebutted. Thus, prima facie, it can be inferred that the arbitration agreement exists between the parties.”

xxx xxx xxx”

(Emphasis Supplied)

17. Reference is also made to the judgment in the case of ***Radico Khaitan Limited Versus Harish Chouhan, 2025 SCC OnLine Del 1675***, wherein, it has been held that where an arbitration clause exists in a Tax Invoice between the parties, the same binds both the parties as a valid arbitration agreement. Thus, it was held as follows:

“xxx xxx xxx

11. From a perusal of the aforementioned legal position, it is evident that in cases where an arbitration clause is contained in an invoice generated by one of the parties to the dispute, the same binds both the parties as a valid arbitration agreement as long as the parties intend to be governed by it. In light of this principle, when examining the factual matrix at hand, it is noted that the parties were engaged in continuous business transactions in 2020 and 2021, and had a running account maintained between them. As against the subject invoices issued by the petitioner, not only were the subject goods



accepted by the respondent without any complaints/claims, but also part payment was made to discharge part liability arising out of the said transactions. The conduct of the parties point towards intention to be governed by the terms of the invoices. Moreover, the arbitration clause contained in the invoice itself is clear to the extent that acceptance of subject goods delivered under the invoice would amount to accepting the terms governing it, including the arbitration clause contained therein. The same was in knowledge of the respondent, who, at no point, objected to the same.

12. Be that as it may, the settled position in law favours reference of disputes to arbitration even in cases of doubt as to the existence and/or validity of the arbitration agreement. This Court has limited jurisdiction at the stage of referral, while considering a petition under Section 11 A&C Act, in deciding the validity of the arbitration agreement. So long as a prima facie opinion can be formed as to the existence of an arbitration agreement between the parties and the facts point to mutual consent between them to be governed by it, the Court is bound to refer the dispute to arbitration. Thereafter, it is within the ambit of the Arbitral Tribunal's powers to conduct a detailed examination as to the validity and existence of the same. Simply speaking, even if there exists a doubt as to the existence of the arbitration agreement, the Court must refer the matter to arbitration.

xxx xxx xxx”

(Emphasis Supplied)

18. Thus, in view of the aforesaid discussion, this Court is of the considered opinion that *prima facie* there exists a valid arbitration between the parties. It is established law that at the stage of a petition under Section 11 of the Arbitration Act, this Court is only required to examine the existence of a *prima facie* arbitration agreement, and not to enter into a detailed adjudication on disputed contractual documents or the merits of the rival claims. Thus, whether any alleged Purchase Order incorporated, superseded or excluded the arbitration clause contained in the invoices, is itself a matter of contractual construction and disputed fact, which falls within the domain of the Arbitral Tribunal.

19. Another objection raised by the respondent is that the notice invoking



arbitration was not a proper notice, since the same did not disclose the factual or contractual basis of the petitioner's claims. However, the said objection is again found to be without any basis. The notice sent by the petitioner clearly records the contentions of the petitioner and the petitioner's intention to invoke the arbitration clause contained in the tax invoices. The position of law has clearly been laid down with regard to Section 21 of the Arbitration Act in a catena of judgments, wherein, it has been held that Section 21 of the Arbitration Act is procedural. The said section does not serve to create or validate the arbitration agreement and merely operates as a statutory mechanism to ascertain the date of initiation of arbitration proceedings for reckoning limitation. The purpose of a notice under Section 21 of the Arbitration Act is to intimate the other party that disputes have arisen and the party invoking, seeks reference thereof to arbitration. Once the disputes are identified and arbitration is invoked, a notice under Section 21 of the Arbitration Act cannot be invalidated merely because it did not contain the detailed particulars that may later form part of the statement of claim before the Arbitral Tribunal.

20. The respondent has also raised an issue with regard to the claims of the petitioner being *ex-facie* barred. In this regard, it is to be noted that the issue of limitation can only be entertained at the pre-reference stage, where the bar of limitation is *ex-facie* evident from the documents on record. Further, at this stage this Court is to only examine whether *prima facie* there exists a valid arbitration agreement between the parties. Thus, this Court in the case of ***Kimaya Buildtech LLP Versus K.C. Software Pvt. Ltd. and Others, 2024 SCC OnLine Del 3436***, has held as follows:

“xxx xxx xxx



8. The judgments of the Supreme Court in Vidya Drolia v. Durga Trading Corpn. [(2021) 2 SCC 1] and BSNL v. Nortel Networks (India) (P) Ltd. [(2021) 5 SCC 738], clearly hold that the issue of limitation may be considered by the Court at the stage of a petition under Section 11 of the Act, only in limited circumstances - when the bar of limitation is ex facie evident from the petition and documents filed. The Court's jurisdiction at the pre-reference stage is only to determine the prime facie existence of an arbitration agreement and the final adjudication, even on the question of limitation, is to be left to the arbitral tribunal, being the parties' chosen forum. In cases of doubt, the default position is to refer the matter to the arbitral tribunal for final adjudication of the matter.

9. In the present case, the document placed on record shows prima facie existence of an arbitration clause in the Agreement dated 21.05.2018, which has been signed on behalf of the respondents. The appearing respondents have not denied the existence of the arbitration agreement, nor have they contended otherwise in their respective replies to the present petition. The notice of invocation, placed on record by the petitioner, shows that arbitration was invoked on 08.04.2021, which is within the prescribed limitation.

10. Although there is some controversy as to the genuineness of the said invocation and the actual date on which the petitioner invoked arbitration, in light of the above cited judgments of the Supreme Court, I am of the view that these issues ought to be left open for final adjudication by the arbitral tribunal.

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(Emphasis Supplied)

21. As regards the issue of limitation, learned counsel appearing for the respondent has urged that the petitioner has relied upon tax invoices dated 10th April, 2019 and 12th April, 2019. Therefore, the period of limitation would commence from the date of issuance of the aforesaid tax invoices relied by the petitioner. The limitation period for initiating proceedings in respect of the said tax invoices would have ordinarily expired on 10th April, 2022 and 12th April, 2022, respectively. Even if the benefit of the exclusion of the limitation period on account of Covid-19 pandemic is taken into account, the petitioner's claim still remains barred by limitation. Further, the



petitioner has wrongfully sought to rely upon WhatsApp communications allegedly exchanged in the year 2023 and certain ledger entries to contend that the limitation period stood extended. As per the respondent, the ledger entries relied upon by the petitioner are unilateral entries in the books of account maintained by the petitioner and cannot be relied to extend the period of limitation.

22. *Per contra*, learned counsel appearing for the petitioner has rebutted the aforesaid contentions to submit that the respondent has erroneously assumed that the limitation period is to be reckoned from the dates of the tax invoices themselves. It is submitted that the cause of action in the present case continued to subsist on 28th April, 2020, when the respondent made the last payment of a sum of Rs. 30,25,325/- in respect of the goods supplied and delivered by the petitioner. The period from 15th March, 2020 to 28th February, 2022 shall be excluded from computing limitation, in terms of the order of the Supreme Court in view of *Covid-19* pandemic. Thus, the notice invoking arbitration was issued on 07th June, 2024, which is within the period of limitation. Thus, as per the case put forth by the petitioner, the claims are well within the period of limitation.

23. *Apropos* the aforesaid submissions made on behalf of the parties on the issue of limitation, this Court notes that it is settled law that the referral Court will not enter into a roving enquiry with the disputed facts and conduct an intricate evidentiary inquiry into the aspect of the claims being time barred and should leave that question for determination of the Arbitrator. Thus, the Supreme Court in the case of ***SBI General Insurance Company Limited Versus Krish Spinning, (2024) 12 SCC 1***, held as follows:



“xxx xxx xxx

136. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the 1996 Act, the Referral Court should limit its enquiry to examining whether Section 11(6) application has been filed within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155]. As a natural corollary, it is further clarified that the Referral Courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time-barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066].

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(Emphasis Supplied)

24. Therefore, the issue of limitation would essentially have to be considered by the Arbitral Tribunal and it cannot be said in the present case that the claims of the petitioner are *ex-facie* barred by limitation.

25. Thus, in view of the above discussion and *prima facie*, there being existence of a valid Arbitration Agreement regarding the disputes that have arisen between the parties, there is no impediment in appointment of an Arbitrator.

26. Accordingly, considering the submissions made before this Court, the following directions are issued:

- i) Mr. Ritvik Chawla, Advocate (Mob: +91-9811017706) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The remuneration of the Arbitrator shall be in terms of Schedule IV of



the Arbitration Act.

iii. The Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference. In the event there is any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.

iv. It shall be open to the respondents to raise counter-claims, if any, in arbitration proceedings.

v. It is made clear that all the rights and contentions of the parties, including, the arbitrability of any of the claims and/or counter-claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.

vi. The parties shall approach the Arbitrator within two (2) weeks from today.

27. Needless to state, nothing in this order shall be construed as an expression of this Court on the merits of the case.

28. All the issues including limitation are kept open.

29. The petition is disposed of in the aforesaid terms.

30. The Registry is directed to send a copy of this order to learned Arbitrator, for information and compliance.

MINI PUSHKARNA, J

MAY 7, 2026/au