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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC011056832025**+ **ARB.P. 2137/2025****KRISHIV POLY PRODUCTS LLP**

.....Petitioner

Through: **Mr. Avneesh Arputham and
Mr. Ankit Sharma, Advs.**

versus

M/S MDP ENTERPRISES & ORS.

.....Respondents

Through: **Mr. Rajesh Kumar and Mr.
Mordhwaj, Advs.****CORAM:****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****JUDGMENT(ORAL)**

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15.10.2026

1. Learned Counsel appearing for the Respondent has raised a preliminary objection that the petition is not maintainable as it is filed based on invoices which are not signed or accepted by the Respondent. He further submits that the Petitioner, in the suit for recovery¹ filed by it, contended before the learned Trial Court that the invoices were not signed by either party and therefore, they did not constitute a valid arbitration agreement.

2. However, it also appears from the record that it was the Respondent who placed reliance upon the said invoices to contend that they contained an arbitration clause and accordingly, the suit was not maintainable.



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3. In that view of the matter, by judgment dated 21.08.2023, the learned Trial Court referred the matter for arbitration and rightly opined as follows:

“8. According to the Plaintiff, since these invoices do not bear the signature of any person on behalf of the Defendants, it cannot be said that the parties were ad-idem on the terms and conditions contained in the invoices including arbitration clause and therefore, the said arbitration clause is not legally binding clause. The Court would have found some merit in this contention, had it come from the mouth of the Defendants. It is unfathomable to find that the Plaintiff, who has raised these invoice in respect of the material supplied by it to the Defendants, is disputing itself the terms and conditions contained in these invoices including arbitration clause saying that these are not binding upon the parties. If that be so, it can easily be held that the material reflected in this invoice was never delivered upon the Defendants as these do not bear any acknowledgement in this regard from the side of the Defendants and that would demolish the entire case of the Plaintiff.”

4. The aforesaid decision was challenged by the Petitioner before this Court and subsequently, the matter travelled to the Supreme Court. Before the Supreme Court, the Respondent filed its Counter Affidavit, whereby it accepted the existence of an arbitration agreement in the invoices and a purchase order dated 18.05.2017, as follows:

“3. In addition to the invoices dated 20.05.2017 and 15.06.2017, the Respondent had also issued a Purchase Order dated 18.05.2017, which likewise contained a valid arbitration clause under the caption “Jurisdiction for Arbitration/Dispute”. These transactional documents—exchanged, relied upon, and acted upon—clearly reflect a mutual intention to arbitrate disputes. The existence of a written arbitration agreement in both invoices and the Purchase Order containing express arbitration clause such that

¹ CS(Comm.) 362/2022



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it cannot be said that there was any specific intention Not to arbitrate. Rather, it is amply clear that there was an arbitration clause and ought to be given effect to in consonance with well—settled law. Thus, Ld. Trial Court and the High Court have rightly given effect to the express arbitration clause between the parties.”

5. In view of the foregoing, a party cannot be permitted to approbate and reprobate.

6. It is now well settled that an arbitration agreement can be in any form; the only thing to be ascertained is that parties have agreed to refer the matter to arbitration².

7. It is also settled that while exercising jurisdiction under Section 11 of the Act, the scope of enquiry is confined to examining the *prima facie* existence of an arbitration agreement, nothing more and nothing less. Only if parties are able to demonstrate non-existence of a valid arbitration agreement, should a court refrain from appointment of an Arbitrator³.

8. In the considered opinion of this Court, the invoices *prima facie* contains a valid arbitration agreement, as follows:

“Invoice dated 20.05.2017

*VAT Declaration: Terms & Conditions:-1.Cenvat Credit of 4% Additional Duty of Customs (SAD) is not Admissible on this invoice
2. All the disputes will be referred to the Arbitration to be held at delhi by an arbitrator appointed by supplier to which the buyer*

² Rukmanibai Gupta v. Collector, Jabalpur, (1980) 4 SCC 556; order dated 28th November, 2023 in Concrete Additives and Chemicals Pvt. Ltd. v. S.N. Engineering Services Pvt. Ltd., in Civil Appeal No. 7858/2023

³ Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd., (2025) 1 SCC 502; SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1; Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1



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shall have no objection & Decision of the Arbitrator shall be final & binding on the Parties & cost of such arbitration proceedings shall be borne by the Unsuccessful Party. Other Condition mention P.T.O.”

“Invoice dated 15.06.2017

*VAT Declaration: Terms & Conditions:-1. Cenvat Credit of 4% Additional Duty of Customs (SAD) is not Admissible on this invoice
2. All the disputes will be referred to the Arbitration to be held at delhi by an arbitrator appointed by supplier to which the buyer shall have no objection & Decision of the Arbitrator shall be final & binding on the Parties & cost of such arbitration proceedings shall be borne by the Unsuccessful Party. Other Condition mention P.T.O.”*

9. Therefore, in the aforesaid circumstances, this Court finds no impediment in appointing a Sole Arbitrator.

10. Accordingly, Ms. Rajni Anand, Advocate, (Mob. No. 9891593401) is appointed as a learned Sole Arbitrator to adjudicate the disputes arisen between the parties. The learned Sole Arbitrator shall enter upon the reference within four weeks from today.

11. The learned Sole Arbitrator will proceed to the arbitration proceedings subject to furnishing requisite disclosures as required under Section 12(2) of the Act within three weeks of entering reference.

12. The arbitration shall be carried under the rules and aegis of Delhi International Arbitration Centre (“DIAC”). The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.



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13. It shall be open to the parties to raise all pleas, including but not limited to objections as to arbitrability and jurisdiction, before the learned Sole Arbitrator who shall decide the same in accordance with law.

14. It is clarified that the observations made herein are only for the purpose of deciding the present petition under Section 11(6) of the Act. The learned Sole Arbitrator shall adjudicate the disputes independently and on their own merits, uninfluenced by any observations contained in the present order.

15. The Registry is directed to send a receipt of this order to Ms. Rajni Anand, learned Arbitrator through all permissible modes including email.

16. Accordingly, the present petition is disposed of in the above terms.

OM PRAKASH SHUKLA, J

OCTOBER 15, 2026/at