



ARBITRATION AND CONCILIATION

Calcutta High Court Upholds Arbitration Clause in Purchase Order: Super Smelters Ltd. v. Universal Cables Ltd.

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Introduction

In *Super Smelters Limited v. Universal Cables Limited*, the Calcutta High Court addressed the enforceability of an arbitration clause embedded in a purchase order and ruled on the appointment of a sole arbitrator under Section 11 of the [Arbitration and Conciliation Act, 1996](#). The key issue was whether the arbitration clause in purchase order remained binding despite a jurisdiction clause in a subsequent tax invoice.

Background of the case

The Petitioner floated a tender, inviting quotations for design, manufacture, supply, testing and commissioning of capacitor power factors improvement for its plant at Jamuria. The Respondent participated in the tender and accordingly, a purchase order bearing no. P119Y-00458 was issued in favour of the Respondent.

In line with the terms of the purchase order, the Respondent issued an invoice for advance payment of 10% of the value of the purchase order, which amounted to Rs. 16,70,000/-. Over the next 11 months, the Petitioner made various payments against the delivery of capacitor panels.

On 15 January 2021, the capacitor panels were dispatched and the same was received on 23 January 2021. However, during the trial run at the HSM division of the Jamuria plant, there arose various issues in all the eight capacitor panels which were received earlier. These issues became the focal point of concern, prompting multiple meetings between both parties from 2 December 2021 to 16 September 2022.

Despite the Petitioner's repeated follow-ups, the Respondent allegedly failed to fulfill its obligations. Instead of rectifying the faults, the Respondent blamed the Petitioner's electrical system and refused to replace the defective components. As per the purchase order, the Respondent was liable to replace 100% of the defective capacitor panels within three years of commissioning.

The grievance of the Petitioner was not solved till November 2023, therefore, the Petitioner terminated the purchase order via email on 14 December 2023. The Petitioner demanded a refund of the entire consideration sum paid, which amounted to Rs. 1,97,06,000/- along with the interest rate of 24% per annum from 23 January 2021 till the date of actual payment. The Respondent denied and disputed the contents of the termination letter and made a demand for further sum of money.

Therefore, there arose differences between the parties and the petitioner invoked an arbitration clause to which the Respondent raised various objections and sought to dispute the arbitration clause itself. The Petitioner contended that the purchase order was a binding contract. Thereafter, an application was filed for the appointment of a sole arbitrator, in terms of the arbitration clause in purchase order.

Legal Provisions Invoked

1. Section 7 of the Arbitration and Conciliation Act, 1996

Defines an arbitration agreement and conditions under which it is valid:

- Section 7(4)(b): Arbitration agreement is valid if recorded via exchange of electronic communication.

2. Section 11 of the Arbitration and Conciliation Act, 1996

Empowers courts to appoint arbitrators where parties fail to do so as per their agreement.

Petitioner's Contentions

The Counsel for the Petitioner contended that the Respondent had accepted the purchase order dated 6 September 2019 and had raised several invoices on the basis of the same purchase order. Therefore, it was clear that the terms and conditions of the aforesaid purchase order were accepted by both the parties and both parties were ad idem regarding the reference of disputes arising from the said purchase order to arbitration.

The intention of the parties was evident from the way they conducted themselves after the issuance of the purchase order. The capacitor panels were also delivered on the basis of the aforesaid purchase order. The Petitioner thereafter issued a termination

letter, which was denied by the Respondent.

The Counsel argued that the Respondent raised a frivolous objection to the arbitration clause only after arbitration was invoked, that a jurisdiction clause in the tax invoice superseded the arbitration agreement. The tax invoice was issued later and did not override the arbitration agreement embedded in the purchase order, which had been accepted via email. Further, the Counsel for the Petitioner contended that the arbitration agreement was covered under Section 7(4)(b) of the [Arbitration and Conciliation Act, 1996](#).

Furthermore, it was submitted that the purchase order contained the essential commercial terms and conditions of the business. As the purchase order was a binding contract, the same prevailed over the invoice. The disputes regarding non-compliance of the guarantee clause, non-refund of money paid in advance and non-replacement of the defective capacitor panels, clearly arose out of breaches of the purchase order. He also pointed out that the Respondent's own counterclaims were based on the purchase order. Accordingly, the Petitioner prayed for reference to arbitration as per the terms of the purchase order.

Respondent's Contentions

The Counsel for the Defendant opposed the petition for an arbitration agreement on the grounds that the tax invoice was not a binding contract. It was contended that although the tax invoice did not contain an arbitration clause, it included a jurisdiction clause conferring exclusive jurisdiction to the courts at Satna, thereby ousting the jurisdiction of the Calcutta High Court.

Further, he contended that the purchase order was a document generated by the Petitioner and the same was not signed by the Respondent. Therefore, the consensus and the meeting of minds of both the parties was absent. Under the GST regime, since the Petitioner accepted the goods and accompanying tax invoice without objection, which specified Satna jurisdiction, the Respondent argued that arbitration does not apply, and only Satna courts have jurisdiction. Following this, the Respondent relied on

In *M/s. Flint Group India Pvt. Ltd. v. Good Morning India Media Pvt. Ltd.*, it was held that a tax invoice can constitute a valid written contract under Order 37 CPC. Similarly, in *Beacon Electronics v. Sylvania & Laxman Ltd.* and *Jatin Koticha v. VFC Industries Pvt. Ltd.*, the courts acknowledged the binding nature of invoices in commercial transactions. The Respondent also cited *Anantara Solutions Pvt. Ltd. v. Vinculum Solutions Pvt. Ltd.* to argue that arbitration clauses contained in invoices may be enforceable, and *Bharat Forge Ltd. v. Onil Gulati*, where invoices were treated as contracts for the purpose of recovery. Finally, reliance was placed on *R.P. Infosystems Pvt. Ltd. v. Redington (India) Ltd* to underscore the principle that parties are bound by terms in invoices if they act upon them without protest. Based on these submissions, the Respondent submitted that the arbitration clause in purchase order was inapplicable, and the present application was not maintainable before the Calcutta High Court.

Court's Observations

The Court held that the purchase order contained the arbitration clause, and it is valid and binding. It was also held that the purchase order was the principal agreement between the parties, therefore, the consensus ad idem could be inferred from the conduct of the parties. The tax invoice was unilaterally raised by the respondent after having acted in terms of the purchase order. Thus, the tax invoice was an ancillary document to the main agreement.

The Court clarified that a substantial cause of action has arisen within the jurisdiction of Kolkata, i.e at Jamuria, Burdwan. The Court clarified that its role under Section 11 is limited to a prima facie examination of whether a valid arbitration agreement exists. It does not entail a detailed trial or analysis of the merits. Accordingly, all jurisdictional objections raised by the Respondent including claims of novation and absence of agreement were left to be decided by the arbitrator.

Judgements Relied on by the Court

- *Parekh Plastics Distributors LLP v. Simplex Infrastructure Ltd.*- Held that where a comprehensive purchase order exists, its arbitration clause prevails over inconsistent or later terms in invoices.
- *Larsen & Toubro Ltd. v. Texmo Pipes & Products Ltd.*- Clarified that purchase orders with arbitration clauses override unilateral arbitration clauses in subsequent invoices.
- *Aslam Ismail Khan Deshmukh v. ASAP Fluids Pvt. Ltd.*- It reiterated that courts under Section 11 must only determine the existence of an arbitration agreement, leaving questions of jurisdiction and arbitrability to the arbitrator.

- *Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd.*- It was held that failure to issue a Section 21 notice to all parties does not preclude the arbitral tribunal from later impleading them; court's Section 11 view doesn't limit the tribunal's power.

The Court also distinguished the judgments relied on by the Respondent, such as *M/s. Flint Group India Pvt. Ltd., Jatin Koticha, and Bharat Forge Ltd.*, noting that those decisions pertained to summary suits under Order 37 CPC and not the enforceability or priority of arbitration clauses in competing commercial documents.

Conclusion

The Calcutta High Court conclusively held that the purchase order, with its detailed terms and valid arbitration clause, constituted the binding contract between the parties. The tax invoice, being a later and unilateral document, could not override the arbitration clause mutually accepted earlier. The Court reinforced the importance of party conduct, electronic exchanges, and the parties' intent in determining the existence of a valid arbitration agreement under Indian law

Accordingly, the Court allowed the petition and appointed Mr. Amitesh Banerjee, Senior Advocate, as the sole arbitrator, leaving all further objections including jurisdiction and arbitrability, to be decided by the tribunal in accordance with law.

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