IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
ORIDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

RESERVED ON: 17.10.2023

DELIVERED ON: 16.11.2023

PRESENT:

THE HON'BLE MR. JUSTICE SHEKHAR B. SARAF

AP 626 of 2018

R.P. INFOSYSTEMS PRIVATE LIMITED

VERSUS

REDINGTON (INDIA) LIMITED

Appearance:
Mr. Subhankar Bag, Adv.
Mr. Dwaipayan Basu Mullick, Adv.
Mr. Sk. Md. Wasim Akram, Adv. .....for the Petitioner/Award Debtor

Mr. Sandip Kumar De, Adv.
Mr. Abhijit Sarkar, Adv.
Mr. Abhik Chitta Kundu, Adv. .....for the Respondent/Award Holder

JUDGMENT

Shekhar B. Saraf, J.:

1. The award debtor has preferred the instant application under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') against an arbitral award

dated May 22, 2018 passed by Sh. K. Balasubramanium, Sole Arbitrator. The award debtor in the instant application is Redington (India) Limited.

2. The award holder has challenged the maintainability of the instant application before this Court wherein it has been argued that this Court does not have the territorial jurisdiction to entertain the instant application as per the arbitration clause contained between the parties in the instant case. In reply, It has been argued by the award debtor that the arbitral clause between the parties in the instant case is an invalid one. The award holder has vehemently opposed the said challenge. Therefore, in this judgment, I have only dealt with the issue of maintainability of the instant Section 34 application.

Facts

3. I have outlined the facts of the instant *lis* below:

a. The award debtor is a company incorporated under the provisions of the Companies Act, 1956 and is involved in the production, sale, distribution of Desktop and Laptop Computer and diverse accessories of computer.

b. The award debtor was under the requirement of various information technology related products which included computers, desktops, laptops, and other computer hardware and peripherals. The award debtor was approached by the award holder for supply of such information technology related peripherals and computer hardware. After meetings and negotiations, it was agreed upon that, the award holder shall act as the vendor of the award debtor and shall cause supply of required components, computer accessories, peripherals and hardware to the award debtor.

c. Based on final products supplied by the award holder, the award debtor used to supply such finished products i.e. Chirag branded Computers, Desktops and Laptops with accredited OEM software installed therein as per the clients requirement to its said clients.

d. During the course of the business relationship between the award debtor and the award holder, the award debtor placed orders to the tune of INR 54,64,78,823.70 (Fifty four crores sixty four lakhs seventy eight thousand eight hundred twenty three rupees and seventy paise only). However, during the course of time award debtor alleged

delays in the supply of ordered components by the award holder in respect of various invoices.

e. Due to such alleged delay in supply of ordered components, certain issues arose in payments to be made by the award debtor to the award holder.

f. As a result, On August 21, 2014, the award holder sent an arbitration notice to the award debtor claiming an amount of INR 1,30,46,250 (One crore thirty lakhs forty six thousand two hundred and fifty rupees only). The award holder vide the said letter also nominated Sh. K. Balasubramanium as the arbitrator.

g. On May 25, 2018 the arbitrator passed an award directing the award debtor to pay the award holder a sum of INR 1,06,01,817/- (One cores six lakhs one thousand eight hundred seventeen rupees only) along with interest @ 18% per annum.

h. The award debtor filed the instant application being AP 626 of 2018 before this Court challenging the said arbitral award dated May 25, 2018 under Section 34 of the Act.

Contentions By The Award Holder

4. Mr. Sandip Kumar De, learned counsel appearing for the award holder has made the following submissions:

a. As per clause 19 of the invoices raised by the award holder which were being raised all throughout the transactions taking place over the years since September, 2008, the dispute would be subject to arbitration to be held in Chennai and Chennai courts would have exclusive jurisdiction to try all cases, both civil and criminal.

b. Although there had never been any objection towards the clauses of the invoices raised by the award holder since the transactions were taking place from September, 2008, the award debtor raised objection towards the clauses of the invoices for the first time in the arbitration. There had been no dispute regarding supply of goods sold and delivered by the award holder to the award debtor and only a frivolous plea of delayed supply without any material particular was sought to be raised in the objection by the award debtor before the Arbitrator. It was further stated by the award debtor that the invoices cannot be the evidence of sale and there is no concluded contract.

c. Before the Arbitrator, the questions relating to the transactions based on invoices were admitted by the award debtor and there had been no specific case either placed or proved by the award debtor regarding non-enforceability of the clauses of the invoices. For the first time in the instant application under Section 34 of the Act, challenging the award of the Arbitrator, the award debtor has taken the point that the clauses written on overleaf of the invoices do not constitute a valid arbitration agreement.

d. If arbitration stipulation is contained in the invoices raised during a decade old commercial relationship, and if there is no case of such clause being freshly introduced, the arbitration agreement exists. Reliance in this regard is placed upon the judgment of the High Court of Delhi in ***Scholar Publishing House Pvt. Ltd. -v- Khanna Traders*** reported in **ILR (2013) 5 Del 3343**.

e. Signing of any formal agreement is not necessary. The arbitration agreement can be spelt out from the correspondences exchanged between the parties. It can be inferred that there had been a meeting of mind between the parties from the invoices raised by them, and supply of goods made in terms of such invoices. Reliance is placed

upon the judgment of the Hon'ble Supreme Court in ***Govind Rubber Limited -v- Louis Dreyfus Commodities Asia Private Limited*** reported in **(2015) 13 SCC 477**.

f. The courts designated in the exclusive jurisdiction clause in the agreement would be the jurisdiction seat to consider and entertain Section 34 application. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in ***Emkay Global Financial Serv ices Limited -v- Girdhar Sondhi*** reported in **(2018) 9 SCC 49**.

g. Invoices containing arbitration clause accepted without demur will be binding on parties. The absence of dispute regarding the invoices or the debt would make the invoices and the arbitration clause contained in the invoice binding on parties. Reliance is placed upon the judgment of the High Court of Madras in ***M/s. Karan Ores & Specials -v- M/s. Endeka Ceramic India Pvt. Ltd. and Anr.*** reported in **2018 SCC OnLine Mad 2434**.

h. The same clause 19 of the invoices in the instant case have been upheld as a valid arbitration clause by the High Court of Madras in a proceeding in relation to the respondent.

Reference is made to ***Mr. Sumit Kumar -v- M/s. Redington (India) Ltd.*** reported in **2018 SCC OnLine Mad 1961**.

i. Clauses printed in the invoices through which the goods were supplied constitute a valid arbitration clause and as the parties made transactions under the similar invoices over the period of years, it cannot be said that there is no arbitration agreement. If the award debtor did not read the conditions, it was at its own peril. Reliance is placed upon the judgment of the High Court of Delhi in ***Alpa Noelities MFG. Co. -v- Jinraj Paper Udyog (Pvt) Ltd.*** reported in **2019 SCC OnLine Del 8794**.

j. Scope of interference of the Courts in applications under Section 34 of the Act is limited only to the extent where the award suffers from patent illegality or shocks the conscience of the court or is against the public policy of India. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Delhi Airport Metro Express Private Limited -v- Delhi Metro Rail Corporation Limited*** reported in **(2022) 1 SCC 131**.

k. Since the award debtor made a continuing transaction with the respondent through the invoices all along since September 2008 and never questioned the similar invoices save for the first time before the Arbitrator, the arbitration clause is binding on the petitioner. There is no denial of the fact that the award holder sold and delivered the goods as part of the continuing transactions under the similar invoices as per revolving credit all along and the petitioner received the goods and, is therefore liable to make payment of the sum of INR 1.06 crore due to the award holder for the same. Due to the exclusive jurisdiction clause of the courts in Chennai in respect of disputes as per Clause 19 of the invoices, the instant application under Section 34 of the Act is not maintainable in this Court. As such, this application is liable to be dismissed. In any event, there is no material in the instant Section 34 application which would amount to patent illegality or shocks the conscience of the court or is against the public policy of India and as such, the Section 34 application is liable to be dismissed.

Contentions By The Award Debtor

5. Mr. Subhankar Bag, learned counsel appearing for the award debtor has advanced the following arguments:

a. At the outset, it is stated the award is wholly without jurisdiction and a nullity. There existed no valid arbitration agreement between the parties based on which the arbitral reference could have been conducted in the first place.

b. An arbitration clause contained in the overleaf of an invoice cannot be construed as a valid arbitration agreement as acceptance of receipt of goods could not mean to be acceptance of the arbitration clause. In any event none of the overleaf portion of the invoices were signed by the award debtor. There was no conclusive contract in respect of the arbitration agreement.

c. The patent illegality perpetrated by the Arbitrator to decide the case on merits without addressing the validity of the arbitration agreement is apparent from the face of records and such an award deserves to be set aside by this Court.

d. The Arbitrator despite formulating a point with regards to the validity of the arbitration clause has not rendered any finding to such effect and has proceeded to decide the claim without adjudicating the arbitrability of the disputes and

has thereby acted with material irregularity and the arbitral award suffers from patent illegality.

e. The Arbitrator has acted unliterally and in a biased manner by deciding the claim on merits without even adjudicating whether there existed any valid arbitration agreement between the parties and as such the arbitral award is grossly in conflict with the basic notion of morality and justice thereby being in direct conflict with public policy of India.

f. The Arbitrator has acted with material irregularity and patent illegality by considering the invoices to be sacrosanct and ignored the contention of the award debtor with regards to delay in supply by the award holder merely based on its endorsement on the invoices.

g. The Arbitrator has erred in law and in facts by arriving at a finding that transactions were solely based on the invoices and acceptance of the invoices would tantamount to acceptance of its terms which were printed overleaf.

h. The backside of the invoices issued by the award holder contains the arbitration clause. There was inordinate delay in supply causing loss and damages to the award debtor. There was also inordinate delay in supply causing loss and damages to the award debtor. There were further disputes in respect of enchasing LC. Therefore, the award debtor did not pay the residual amount till reconciliation of accounts and settlement of disputes.

i. Arbitration clause printed on the backside of the purchase orders is not a valid arbitration clause or agreement. Judgments of the High Court of Delhi in ***Taipack Ltd. -v- Ram Kishore Nigar Mal*** reported in **2007 SCC OnLine Del 804, Alupro Building Systems Pvt. Ltd. -v- Ozone Overseas Pvt. Ltd.** reported in **2017 SCC OnLine Del 7228**, Hon'ble Supreme Court in ***Groupe Chimique Tunisien SA -v- Southern Petrochemicals Industries Corp. Ltd.*** reported in **(2006) 5 SCC 275**, and High Court of Allahabad in ***Oriental Fire & General Insurance Co. Ltd. and Anr. -v- New Suraj Transport Co. (P) Ltd.*** reported in **1984 SCC OnLine All 828**, are relied upon in this regard**.**

j. In the instant case the award holder has appointed the arbitrator unilaterally and therefore the initiation of arbitration proceedings is illegal rendering the award passed to be a nullity. Reliance is placed upon the judgments of the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC And Anr. -v- HSCC (India) Limited*** reported in **(2020) 20 SCC 760** and ***Ellora Paper Mills Limited -v- State of Madhya Pradesh*** reported in **(2022) 3 SCC 1** in this regard.

k. The purported Section 21 notice also does not refer to the arbitration clause and thus is not a valid Section 21 notice.

l. Although the arbitral award records jurisdiction and arbitrability as the first issue but such issue was never decided in the impugned award. Apart from being patently illegal the award also shocks judicial conscience. Judgment of the Hon'ble Supreme Court in ***Ssangyong Engineering and Construction Company Limited -v- National Highways Authority of India (NHAI)*** reported in **(2019) 15 SCC 131** is relied upon in this regard.

m. Award was not published in accordance of Section 3 of the Act, and the award was not also served in terms of Section 31(5) of the Act.

n. Even if no objection to jurisdiction is raised under Section 16 of the Act, same can be raised under Section 34 of the Act. Reliance in this regard is also placed on the judgment of the Hon'ble Supreme Court in ***Lion Engineering Consultants -v- State of Madhya Pradesh and Ors.*** Reported in **(2018) 16 SCC 758**

o. In the purchase order there is no arbitration clause and the jurisdiction is in Kolkata. The cause of action also entirely arose in Kolkata. Secondly, arbitration clause mentioned in the backside of invoices cannot be considered as a valid arbitration agreement since purchase order is the only contract between parties and supersede the invoice.

p. Judgments of the Hon'ble Supreme Court in ***Emkay Global Financial Services Limited -v- Girdhar Sondhi*** reported in **(2018) 9 SCC 49, *Bharat Aluminium Co. -v- Kaiser Aluminium Technical Services Inc.*** reported in **(2012) 9 SCC 552,** and in ***Ravi Ranjan Developers Pvt. Ltd.*** reported in **2022 SCC OnLine SC 568**, this Court in

Commercial Division Bowlopedia Restaurants India Limited -v- Devyani International Limited reported in **2021 SCC OnLine Cal 103,** and ***Jaspal Singh Chandhok and Others -v- Sandeep Poddar and Another*** reported in **2023 SCC OnLine Cal 361**, and High Court of Delhi in ***Hunch Circle Private Limited -v- Futuretimes Technology India Pvt. Ltd.*** reported in **2022 SCC OnLine Del 361,** and ***Indian Oil Corporation Ltd. -v- Fepl Engineering (P) Ltd. and Anr.*** reported in **2019 SCC OnLine Del 10265** are relied upon. These judgments have been added by the award debtor to its written notes without any reference to the point of law for which these judgments have been relied upon. As such, I have not dealt with these judgments.

Analysis and Conclusion

6. I have heard the learned counsel appearing on behalf of the parties and perused the materials on record.

7. For better adjudication of the issue at hand, I have divided this judgment into two issues:

Issue No.1:- What constitutes a valid arbitration agreement as per Section 7 of the Act ? And is the arbitration clause contained in the invoices raised by the award holder upon the award debtor a valid one ?

Issue No.2:- Does this Court has the territorial jurisdiction to entertain the instant Section 34 application under the Act ?

Issue No. 1

8. It would be prudent on my part to reproduce Section 7 of the Act below which outlines the requirements of a valid arbitration agreement:

"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) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(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."

9. Arbitration Act, 1940 which was predecessor to the Act of 1996, defined arbitration agreement as follows –

*"**2. Definitions**.—In this Act, unless there is anything repugnant in the subject or context,—*

(a) "arbitration agreement" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. "

10. A bare comparative reading of the provisions of the 1940 Act and the Act of 1996 makes it evident that, a particular form of arbitration agreement has never been prescribed by the

legislature. Neither, in the 1940 Act earlier nor in the 1996 Act which is currently in force.

11. While dealing with Section 2(a) of the 1940 Act, the Hon'ble Supreme Court in ***Rukmanibai Gupta -v- Collector***, reported in **(1980) 4 SCC 556** outlined that arbitration agreement is not required to be in any particular form:

> ***"6.*** *Does clause 15 spell out an arbitration agreement? Section 2(a) of the Arbitration Act, 1940, defines "arbitration agreement" to mean a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. Clause 15 provides that any doubt, difference or dispute, arising after the execution of the lease deed touching the construction of the terms of the lease deed or anything therein contained or any matter or things connected with the said lands or the working or non-working thereof or the amount or payment of any rent or royalty reserved or made payable thereunder, the matter in difference shall be decided by the lessor whose decision shall be final. The reference has to be made to the lessor and the lessor is the Governor. His decision is declared final by the terms of the contract. His decision has to be in respect of a dispute or difference that may arise either touching the construction of the terms of the lease deed or disputes or differences arising out of the working or non-working of the lease or any dispute about the payment of rent or royalty payable under the lease deed. Therefore, clause 15 read as a whole provides for referring future disputes to the arbitration of the Governor.* ***Arbitration agreement is not***

required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if disputes arise between them in respect of the subject-matter of contract such dispute shall be referred to arbitration, then such an arrangement would spell out an arbitration agreement. A passage from RUSSELL ON ARBITRATION, 19th Edn., p. 59, may be referred to with advantage:

"If it appears from the terms of the agreement by which a matter is submitted to a person's decision that the intention of the parties was that he should hold an inquiry in the nature of a judicial inquiry and hear the respective cases of the parties and decide upon evidence laid before him, then the case is one of an arbitration."

In the clause under discussion there is a provision for referring the disputes to the lessor and the decision of the lessor is made final. On its true construction it spells out an arbitration agreement."

(Emphasis added)

12. As long as arbitration agreement conforms to certain principles outlined in various judicial pronouncements and essentials outlined in Section 7 of the Act, it is to be construed as a valid arbitration agreement. This is in line with the principle of party autonomy which is the guiding principle behind arbitration in India.

13. In its judgment in the case of ***MTNL -v- Canara Bank*,** reported in **(2020) 12 SCC 767**, the Hon'ble Supreme Court espoused the principles on Section 7 of the Act and what constitutes a valid arbitration agreement –

> *"9. A valid arbitration agreement constitutes the heart of an arbitration. An arbitration agreement is the written agreement between the parties, to submit their existing, or future disputes or differences, to arbitration. A valid arbitration agreement is the foundation stone on which the entire edifice of the arbitral process is structured. A binding agreement for disputes to be resolved through arbitration is a sine qua non for referring the parties to arbitration.*
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> ***
>
> *9.2. The arbitration agreement need not be in any particular form. What is required to be ascertained is the intention of the parties to settle their disputes through arbitration. The essential elements or attributes of an arbitration agreement is the agreement to refer their disputes or differences to arbitration, which is expressly or impliedly spelt out from a clause in an agreement, separate agreement, or documents/correspondence exchanged between the parties.*
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> *9.3. Section 7(4)(b) of the 1996 Act, states that an arbitration agreement can be derived from exchange of letters, telex, telegram or other means of communication, including through electronic means. The 2015 Amendment Act inserted the words "including communication through electronic means" in Section 7(4)(b). If it can prima facie be shown that parties are ad idem, even though the other party may not have*

signed a formal contract, it cannot absolve him from the liability under the agreement [Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia (P) Ltd., (2015) 13 SCC 477 : (2016) 1 SCC (Civ) 733] .

9.4. Arbitration agreements are to be construed according to the general principles of construction of statutes, statutory instruments, and other contractual documents. The intention of the parties must be inferred from the terms of the contract, conduct of the parties, and correspondence exchanged, to ascertain the existence of a binding contract between the parties. If the documents on record show that the parties were ad idem, and had actually reached an agreement upon all material terms, then it would be construed to be a binding contract. The meaning of a contract must be gathered by adopting a common sense approach, and must not be allowed to be thwarted by a pedantic and legalistic interpretation. [Union of India v. D.N. Revri & Co., (1976) 4 SCC 147]

9.5. A commercial document has to be interpreted in such a manner so as to give effect to the agreement, rather than to invalidate it. An "arbitration agreement" is a commercial document inter partes, and must be interpreted so as to give effect to the intention of the parties, rather than to invalidate it on technicalities.

9.6. In Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd. [Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd., (1963) 3 SCR 183 : AIR 1962 SC 1810] , this Court while ascertaining the terms of an arbitration agreement between the parties, held that : (AIR p. 1820, para 30)

"30. ... If on a reading of the document as a whole, it can fairly be deduced from the words actually used therein, that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term. The terms of a contract can be express or implied from what has been expressed. It is in the ultimate analysis a question of construction of the contract."

(emphasis supplied)

9.7. In interpreting or construing an arbitration agreement or arbitration clause, it would be the duty of the court to make the same workable within the permissible limits of the law. This Court in Enercon (India) Ltd. v. Enercon GmbH [Enercon (India) Ltd. v. Enercon GmbH, (2014) 5 SCC 1 : (2014) 3 SCC (Civ) 59] , held that a common sense approach has to be adopted to give effect to the intention of the parties to arbitrate the disputes between them. Being a commercial contract, the arbitration clause cannot be construed with a purely legalistic mindset, as in the case of a statute."

14. Most recently in ***Solaris Chem Tech Industries Ltd. -v- Assistant Executive*** reported in **2023 SCC OnLine SC 1335**, the Hon'ble Supreme Court reiterated the conditions that must be satisfied by a valid arbitration agreement:

"18. Sub-section (1) of Section 7 indicates that an arbitration agreement is an agreement by 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". It is well settled that in determining whether there is an arbitration agreement, the terms of the contract between the parties must be read as a whole. The 1996 Act does not prescribe a certain form of an arbitration agreement. *The use or the absence of the word 'arbitration' is not conclusive and the intention of the parties to resolve the disputes through arbitration should be clear from the terms of the clause. In Jagdish Chander v. Ramesh Chander, the Court summarised the relevant factors for determining whether an agreement is an arbitration agreement within the meaning of S. 7 of the 1996 Act. The Court held[4]:*

"(ii) Even if the words "arbitration" and "Arbitral Tribunal (or arbitrator)" are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. ***They are : (a) The agreement should be in writing. (b) The parties should have agreed to refer any disputes (present or future) between them to the decision of a private tribunal. (c) The private tribunal should be empowered to adjudicate upon the disputes in an impartial manner, giving due opportunity to the parties to put forth their case before it. (d) The parties should have agreed that the decision of the private tribunal in respect of the disputes will be binding on them."***

(emphasis added).

19. The following conditions must be satisfied by a valid arbitration agreement:

(i) The agreement must be in writing, as stipulated by sub-section (3) of Section 7;

(ii) Parties should have agreed to refer any disputes, present or future, between them to an arbitral tribunal;

(iii) The arbitral tribunal should be empowered to adjudicate upon the disputes in an impartial manner giving due opportunity to the parties; and

(iv) The parties should have agreed that the decision of the tribunal would be binding between them."

(Emphasis added)

15. In ***Thomson Press India Limited -v- The Secretary, Finance, Govt. of NCT of Delhi & Ors.***, reported in **1999 SCC OnLine Del 56**, the High Court of Delhi outlined that words used in an arbitration clause must be words of choice and determination to go to arbitration and not problematic words of mere possibility –

"As held in the judgments aforesaid, ***the court should look to the substance rather than the form of the agreement and the mere fact that the words like "reference" or "arbitrator" do not find place in the agreement it cannot be said that the agreement is not an arbitration agreement within the meaning of Section 2(a) of the Arbitration Act. No particular form appears to have been laid down as universal for framing an arbitration***

agreement; the only certain thing being that the words used for the purpose must be the words of choice and determination to go to arbitration and not problematic words of mere possibility."

(Emphasis added)

16. What needs to be kept in mind is that, the legislature in all its wisdom has not provided any specific or standard form of an arbitration agreement. It can be in myriad shapes and forms. What is necessary is to gauge the intent of the parties to refer the disputes between them to arbitration by way of such clause. Party autonomy is the cardinal principle of arbitration regime in India, and there is enough flexibility provided for the parties to draft an arbitration clause as per their own convenience and requirement subject to the conditions outlined in Section 7 of the Act.

17. While it is the plain written text that constitutes an arbitration agreement, the courts while adjudicating the validity of an arbitration agreement, must also take into account the intent of the parties and not fixate on the mere wordings and the format of the arbitration agreement. Even a text written on a plain white paper can constitute an arbitration agreement if it

conforms to the requirements laid down under Section 7 of the Act.

18. The principles which emerge from the aforesaid judgments can be encapsulated as follows – While there is no standard form that can be prescribed for an arbitration agreement, there are certain essential it needs to conform to. What is *sine qua non* for an agreement to be considered as an arbitration agreement is that the intent of the parties to refer their disputes to arbitration must be clear and absolute. Arbitration clauses can never be imposed unilaterally and must be agreed upon by both the parties in the same sense. In other words, the parties must have *consensus ad idem* on the arbitration agreement, for it to be considered a valid one.

19. Coming to the instant case, the arbitration clause under challenge is contained in Clause 19 of the invoices raised by the award holder upon the award debtor. The said clause has been reproduced below:

> *"All contracts of the company including any dispute arising out of an in connection with this contract/transaction will be subject to Arbitration of sole Arbitrator to be appointed by Redington (India) Limited at Chennai and Buyer explicitly*

agrees for appointment of arbitrator as above. Such arbitration proceedings shall be initiated within 3 years from the date of dispute. ***Without prejudice to the above, courts in Chennai shall have exclusive jurisdiction to try all proceedings such as arbitration, civil or criminal including complaints u/sec 138 of the N.I Act on account of non-payment of negotiable instruments exchanged between the Buyer and Supplier."***
(Emphasis Added)

20. In **Surya Processors Private Limited -v- Shree Jai Gurudev Textile Agencies**, reported in **2022 SCC OnLine Del 984** the High Court of Delhi held that an arbitration agreement need not be in a particular form, and to interpret an agreement as "arbitration agreement', it has to be ascertained whether there is consensus ad idem between the parties to have their disputes referred to arbitration :-

6. The arbitration agreement relied upon by SPPL is contained in the footnote of the invoices which features on the same page, as are other details of the invoice. The same is in a readable font size, and reads as under:—

"All disputes are to be decided by Delhi Hindustani Mercantile Association (Regd.), as per the Rules & Regulations as under Arbitration & Conciliation Act"

7. The invoices are not signed by SJGTA, and therefore the question that arises is if they can be considered to be a

ground to deny the agreement. Section 7(3) of the Act stipulates that the arbitration agreement shall be in writing, which is undoubtedly an essential requisite. Sub-clause (b) and (c) of Section 7(4) of the Act indicates the legislative intent to also include a written document, not signed by the parties, within the scope of a valid arbitration agreement. Section 7(4)(b) of the Act entails that an arbitration agreement can be in the nature of exchange of communication, providing a record of the agreement in writing. Thus, taking into consideration the language deployed in the aforesaid provision, it emerges that the signature of either party on the arbitration agreement is not mandatory.

8. Furthermore, the aforesaid provision also manifests that an arbitration agreement need not be in a particular form. It is no longer res integra that a valid arbitration agreement can be constituted as long as all the essential attributes are fulfilled. ***There are numerous case laws holding that to interpret the agreement as an 'arbitration agreement', one has to ascertain whether there is consensus ad idem between the parties to have their disputes referred to arbitration. In terms of Section 7(c), even exchange of statement(s) of claim and defence 'in which existence of the agreement is alleged by one party and not denied by the other' - can constitute as an arbitration agreement.***

***

> ***10.*** *The judgments relied upon by SJGTA are of no assistance to them.* ***Each case turns on its own facts. The conduct of parties is the most relevant and determinative test. In other words, if a party does not urge the contention of non-existence of an arbitration agreement in its reply to the claim, then the arbitration agreement is deemed to exist."***
>
> **(Emphasis Added)**

21. Moreover, the judgment of the High Court of Delhi in ***Scholar Publishing Home Pvt Ltd. -v- M/s Khanna Traders ,*** as relied upon by the award holder also supports the proposition that since Section 7 of the Act does not mandate any standard form of an arbitration agreement, invoices raised by the parties can also be considered to be a valid arbitration agreement. Furthermore, the Delhi High Court also held in the said case that the commercial relationship and existence of the arbitration agreement between the parties can be inferred by the conduct of the parties if they have acted upon the terms and conditions of the said invoices.

22. Recently, in its judgment in the case of ***Bennet Coleman & Co. Ltd. -v- MAD (India) Pvt. Ltd***. reported in **2022 SCC OnLine Bom 7807,** High Court of Bombay held that in a case where parties have acted upon the invoices and there being no denial

of such invoices by either of the parties, the arbitration agreement contained in such invoices would constitute to be a valid one if the reference to arbitration is clearly stipulated:

> *"27. Since in the present case, it can be clearly seen that the parties have acted upon the invoices and there was no denial of the invoices raised by the applicant, the clause contained in the invoices which clearly stipulate a reference to arbitration, deserve to be construed as an arbitration clause. The decision of this Court in case of Concrete Additives (supra) is delivered in the peculiar facts of the case and the law being well crystallized to the effect that any document in writing exchanged between the parties which provide a record of the agreement and in respect of which there is no denial by the other side, would squarely fall within the ambit of Section 7 of the Arbitration and Conciliation Act, 1996 and would amount to an arbitration clause.:……."*

23. The award debtor in the instant case placed reliance upon several judgments to dispute the arbitration clause in the instant case, but to my mind, they do not advance the award debtor's case. While in ***Taipack Ltd. -v- Ram Kishore Nigar Mal (supra)***, High Court of Delhi had concluded that there was no valid arbitration clause between the parties, it was due to the fact that the conditions printed on the overleaf were never accepted by the petitioner. As a result, High Court of Delhi held that unless there was acceptance of those conditions contained

in the invoice, by the petitioner, the same cannot result in a binding and enforceable contract. However, this is not the situation in the case before me. Every single tax invoice raised by the award holder upon the award debtor contained a stipulation that :

"**The person signing this document has got authority to bind the Buyer and to sign on behalf of the Buyer. By acknowledging receipt of goods hereon, the Buyer irrevocably agrees to abide by these terms and conditions overleaf over any other terms agreed elsewhere between the Buyer and Supplier."**

This stipulation is prominently displayed and is in readable font. Moreover, the invoices are also signed and stamped by the award debtor. By signing such invoices, without raising any demur, the award debtor agreed to bind itself by the terms and conditions contained on the overleaf of the invoices raised by the award holder.

24. In the case of ***Alupro Building Systems Pvt. Ltd. -v- Ozone Overseas Pvt. Ltd.*** **(supra)**, there was no specific stipulation that receiving of goods would bind the petitioner therein to the terms and conditions contained in the invoices. Being factually

different, the principles of that case cannot be made applicable to the instant case before me. In ***Groupe Chimique Tunisien SA -v- Southern Petrochemicals Industries Corp. Ltd. (supra)***, the Hon'ble Supreme Court was dealing with a situation where the invoices for the supplies made contained no reference to terms or arbitration agreement. The same is not the case before me. In ***Oriental Fire & General Insurance Co. Ltd. (supra)***, High Court of Allahabad had outlined that if terms and conditions printed on a consignment note are to be made binding on the parties, they must be brought to the notice of the consignor before the contract of carriage is completed. This, in my opinion, does not help the award debtor's case since the invoices in the instant case clearly stipulated that if delivery of goods is accepted by the award debtor, it agrees to be bound by the terms and conditions contained on the overleaf of the invoice.

25. Clause 19 of the invoices need to be tested on the anvils of the judicial pronouncements discussed earlier in the instant judgment. It is evident from a reading of the said clause that the intention of the parties to refer their disputes to arbitration is clear and explicit. As far as *consensus ad idem* goes, it needs to be noted that each invoice containing such terms and conditions had been signed and accepted without any sign of protest from

the award debtor. Keeping that in mind, by signing the invoices and accepting the delivery of goods, award debtor can be said to have agreed to the arbitration clause in the same sense as the award holder.

26. As outlined above, Clause 19 of the invoices raised by the award holder satisfy the test for a valid arbitration agreement. The clause clearly outlines the intent of the parties to refer the dispute to arbitration, and also resolves that *all* disputes arising will be settled by arbitration. Furthermore, the document has been signed by the parties on multiple occasions. As such, it is not open to the award debtor to challenge the validity of the said arbitration clause at this juncture.

27. To summarise the above discussion, for an arbitration clause printed on a tax invoice/sales receipt, etc. to be considered a valid one following conditions must be met:

a. Terms and conditions contained in an invoice, including the arbitration clause, must be displayed in a prominent and intelligible format. If the said terms and conditions, including the arbitration clause, are printed on the overleaf of the invoice/sales receipt, there must be a declaration to that effect on front of the invoice/sales receipt.

b. The buyer, or the person receiving the tax invoice/sales receipt must explicitly consent to the arbitration clause. In case of any disagreement with the arbitration clause contained in the tax invoice/sales receipt, the buyer or the person receiving it must register their protest with the seller within a reasonable period of time.

c. If the buyer accepts the delivery of goods based on a tax invoice/sales receipt, without registering any protest against the arbitration clause contained within such a tax invoice/sales receipt within a reasonable period of time, then it could be inferred that the buyer has consented to the arbitration clause contained in the tax invoice/sales receipt.

d. In a case, where the invoice/sales receipt containing the arbitration clause does not bear the signature of the buyer, consent can also be gauged from the fact whether or not the parties have acted on such invoices or not. If the answer to said question is in affirmative, then parties will be bound by terms and conditions contained in the invoice/sales receipt.

28. It was argued by the award debtor that the purchase order is the only contract between the parties and, and that the same confers jurisdiction upon Kolkata. However, the said purchase orders contain no arbitration clause and the clause referred to is a generic one which states that "The offer subject to Kolkata jurisdiction". Clause 19 of the invoices raised by the award holder contains the arbitration clause and also confers exclusive jurisdiction upon the courts in Chennai. These invoices having been signed and accepted by the award debtor, will override the purchase orders issued earlier. Moreover, the subject matter of the dispute arises out of the invoices between the parties. An arbitration clause which specifically confers jurisdiction upon courts at a particular place or designates the seat of arbitration, will override a general jurisdiction clause even if contained in an earlier document exchanged between the parties.

29. The Arbitrator has dealt with the question of the validity of the arbitration clause contained in the invoices in the arbitral award dated May 22, 2018. Relevant portion from the arbitral award has been extracted below:

> *"Now, coming to the impugned invoice details as shown in claim statement, first thing to be accepted is that the commercial transaction that has taken place between the claimant and respondent has not been denied by the*

respondent. This fact itself categorically goes to confirm the claimant's representation that the respondent has expressly consented to pay the price of the commodities such as Intel Processor & Mother Boards, Gigabyte Mother board Etc., supplied by the claimant during the period of transaction. Since, the transactions were based admittedly on the invoice only, naturally the respondent would have agreed for the terms and conditions that have been stated overleaf thereon, because the transaction would not have been complete otherwise. In that connection only, the claimant has filed Ex. C3 invoices to prove the transaction that had taken place between the claimant and the respondent undisputedly.

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C.W. 1 further states that after considering the part payments made by the respondent against the aforesaid invoice, an outstanding sum of Rs. 1,06,01,817/- (Rupees One Crore six Lakh one thousand eight hundred and seventeen only) is still due and payable to the claimant. In as much as it is an admitted fact that the respondent was having the transaction with the claimant and it was all based on revolving credit basis, the invoice details regarding this transaction as shown in the claim statement as well as the Ex. C3 invoice series are only believed to be true and correct. Further, the respondent has not proved either orally or materially its allegations raised in the statement of defence. Under all these circumstances, above stated, these points are answered accordingly in favour of the claimant only."

30. Although, the award debtor has questioned the validity of the arbitral award dated May 22, 2018 on the grounds of it being a nullity, it is not a question for me to look into. Having upheld the validity of the arbitration clause between the parties, any challenge to the said arbitral award needs to be determined by the appropriate Section 34 court.

31. In light of the aforesaid discussion on law and facts, this Court cannot help but conclude that the arbitration clause contained on the overleaf of the invoices being Clause No. 19 is a valid one.

Issue No. 2

32. Having concluded Issue No. 1 in the favour of the validity of the arbitration clause contained in the invoices raised by the award holder, I now proceed to deal with whether at this Court can have jurisdiction to deal with the instant section 34 application when courts in Chennai have been granted exclusive jurisdiction.

33. As penned by R.F. Nariman, J. in ***Indus Mobile Distribution (P) Ltd. -v- Datawind Innovations (P) Ltd.*** reported in **(2017) 7 SCC 678**, the moment parties to a contract confer exclusive jurisdiction upon the courts at a place, all other courts would be

excluded from dealing with matters arising out of the arbitration proceedings in relation to such a contract even if a part of cause of action arrives within their territorial jurisdiction. R.F. Nariman, J. further stated that the moment a seat of arbitration is designated, it is akin to an exclusive jurisdiction clause. The seat of arbitration in the instant case has been designated as Chennai in addition to it having been granted exclusive jurisdiction. Relevant paragraphs from ***Indus Mobile (supra)*** have been extracted below:

> *"19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.*

20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. [B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427] Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment [Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC OnLine Del 3744] is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. The appeals are disposed of accordingly."

34. The law in this regard has also been discussed extensively by the Hon'ble Supreme Court in ***Brahmani River Pellets Ltd. -v- Kamachi Industries Ltd.,*** reported in **(2020) 5 SCC 462,** wherein it was propounded that when a jurisdiction of the court at a particular place has been specified in the contract, only such court will be jurisdictionally competent to dealt with the matter and all other courts will be excluded from having any

jurisdiction whatsoever. One distinction emerges between the case in ***Brahmani River Pellets (supra)*** and the instant Section 34 application. Hon'ble Supreme Court in the aforesaid case had come to a conclusion that even if the words "exclusive" or "exclusive jurisdiction" or "only" or "alone" have not been used while granting jurisdiction to a particular place in an arbitration agreement, the expression *expressio unius est exclusio alterius* (expression of one is the exclusion of another) must be kept in mind while interpreting such an arbitration agreement. In the instant case, however, the words "exclusive jurisdiction" have been used to confer jurisdiction upon courts in Chennai. Relevant portions from ***Brahmani River Pellets (supra)*** have been extracted below:

> *"15. As per Section 20 of the Act, parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court which has jurisdiction out of two or more competent courts having jurisdiction. This has been made clear in the three-Judge Bench decision in Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157]*
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> ***
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> *32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of*

the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement— is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. **It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner."**

(Emphasis Added)

35. In ***Homevista Décor and Furnishing Pvt. Ltd. and Another -v- Connect Residuary Private Limited,*** reported in **2023 SCC**

OnLine Cal 1405, I had held that the courts of the place selected as having exclusive jurisdiction over disputes should be considered as 'seat' and having jurisdiction to entertain applications under the Act:

> ***"21.*** *Contractual interpretation necessitates taking into consideration all clauses and relevant factors to propound the proper intention between the parties. The rule of harmonious construction must be applied so that a panoramic meaning can be given to any agreement. The law with respect to arbitration clauses, as laid down in BGS SGS SOMA (supra) and Mankastu Impex (supra), is not alien to such interpretive principles. In light of the Apex Court's decisions in these two judgments, other clauses have to be scrutinized, when a location has been mentioned as 'venue' or 'place', to fathom if such a location can be dignified with the status of 'seat'. In my opinion, a clause opting a place as 'venue' or 'place' read with another clause which mentions courts of another location to have jurisdiction over disputes that may arise, inhibits the promotion of such 'venue' to 'seat'. The intention that emerges from an aggregate understanding of such clauses is that the 'venue' or 'place' was to be a convenient location for holding of arbitration seatings.* ***The courts of the place selected as having exclusive jurisdiction over disputes should be considered as 'seat' and having jurisdiction to entertain applications under the Act****."*
>
> **(Emphasis added)**

36. While dealing with the question of seat and jurisdiction in the instant case, my mind went down memory and to the famous song from the movie Koi Mil Gaya (2003), - *"Idhar chala main udhar chala, Jaane kahan main kidhar chala"*. Where does a party go against an arbitration proceeding or a proceeding arising out of or in relation to an arbitration agreement ? Well, look no far than the arbitration clause itself. If the venue of arbitration has been designated, and there is no contrary indicia, or exclusive jurisdiction clause, then the venue will also assume the position of jurisdictional seat. However, in a case, where either the seat of arbitration has been designated or an exclusive jurisdiction clause is present in the arbitration agreement, then there is no room left for further discussion or deliberation. Only the courts upon whom exclusive jurisdiction has been conferred or the courts exercising territorial jurisdiction over the seat of arbitration, will be competent to dealt with matters arising out of that arbitration agreement.

37. Recently, in ***Damodar Valley Corporation -v- BLA Projects Private Limited*** , reported in **MANU/WB/2216/2023**, this Court had reiterated the aforesaid view:

> *"26. The respondent BLA's argument of the New Alipore Court having exclusive jurisdiction to try all disputes between the parties by reason of the cause of action being*

centered at New Alipore has also been negated by the recent decision of the Supreme Court in BBR (India). ***In that decision, the Supreme Court reiterated the view taken in BGS SGS Soma-which in turn had relied on BALCO-to hold that selection of the seat of arbitration would be akin to an exclusive jurisdiction clause and the courts at the "seat" alone would have jurisdiction to entertain challenges against arbitral awards. The Supreme Court in fact opined that the definition of "Court" under section 2(1)(e) of the Act would be the courts at the seat of arbitration. BGS SGS Soma also drew a distinction between courts which would have jurisdiction where the cause of action is located and those courts where the arbitration takes place.*** *BBR further relied upon the earlier decision of the Supreme Court in Brahmani River Pellets Limited v. Kamachi Industries Limited; MANU/SC/0968/2019 : (2020) 5 SCC 462 to say that the moment the parties designate the seat, the courts at the seat would be vested with exclusive jurisdiction to regulate arbitration proceedings as opposed to the courts where the cause of action may have arisen.*

27. Therefore, BLA's contention, that the High Court at Calcutta will be denuded of jurisdiction to try the present application in the absence of any cause of action having arisen or accrued within the territorial jurisdiction of this Court, must be negated. ***As conclusively held by the Supreme Court in the decisions stated above, the juridical seat of arbitration may be a neutral place without any nexus with the cause of action. BALCO, BGS SGS Soma and BBR along with the other decisions cited above also resolve the conflict between the***

governing law clause and the arbitration clause with precedence given to the latter in matters of supervision and control of the arbitration proceedings including any challenges made to the arbitral award. *There is no "Contra Indicia" to un-Seat the Venue in this case*

28. Section 20 of the 1996 Act defines "Place" of arbitration. It has now judicially been settled that section 20(1) and (2) refers to juridical seat of arbitration whereas section 20(3) points to the venue; Ref: BGS SGS Soma. The effect of section 20 is that parties are given free rein to choose the place where the arbitration will be anchored coupled with the freedom to decide where to hold the sittings as a matter of convenience. In cases where there is no specific designation of the seat of arbitration, the Courts have made an attempt to locate the seat based on indicia apparent from the conduct of the parties to fix the seat at a particular place-or alternatively, to dislocate the seat elsewhere based on any contrary indication shown by the parties."

(Emphasis Added)

38. What can be concluded from the aforesaid discussion is that, parties are at liberty to designate a place as the seat of arbitration. They are also free to grant exclusive jurisdiction to the courts at a particular place. The moment an exclusive jurisdiction clause granting jurisdiction to courts at a particular

place is added to an arbitration agreement, courts at any other place would be barred from entertaining any and all applications arising out of or in relation to arbitration proceedings resulting from such a contract. Any question pertaining to the validity of the arbitration proceeding arising out of an exclusive jurisdiction clause, will have to be dealt with by the courts upon whom jurisdiction has been conferred. As the famous English saying goes "*There is a place for everyone in the world"* and for parties in an arbitration, it is the place mentioned in the arbitration agreement itself.

39. It is evident from the arbitration clause contained between the parties, and the arbitral award dated May 22, 2018 that in addition to exclusive jurisdiction having been conferred upon courts in Chennai, the seat of the arbitration was also in Chennai. As such, there is no room left for any further interpretation and this Court concludes that the present Section 34 application is not maintainable before this Court. Issue No. 2 is accordingly answered in the negative.

Principles

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.

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.

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.

42. As a result, AP 626 of 2018 is dismissed for lack of territorial jurisdiction. Additional time of three weeks is granted to the award debtor to proceed before the appropriate forum. Needless to mention benefit of Section 14 of The Limitation Act, 1963 shall be available to the petitioner. There shall be no order as to the costs.

43. Urgent photostat-certified copy of this order, if applied for, should be readily made available to the parties upon compliance with requisite formalities.

(Shekhar B. Saraf, J.)

November 16, 2023

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