2026 SCC OnLine Del 6430

In the High Court of Delhi at New Delhi
(BEFORE AJAY DIGPAUL, J.)

Ambica Enterprises ... Petitioner;

Versus

Alok Gupta ... Respondent.

CM(M) 1724/2026, CM APPL. 51407/2026 and CM APPL. 51408/2026[†§]

Decided on August 24, 2026, [Reserved on: 06.08.2026]

Advocates who appeared in this case :

Mr. Krishnan Kumar, Mr. Aman Bhati and Mr. Anubhav Kumar, Advocates.

Mr. Sunil Goyal, Advocate along with Ms. Tanveet Kaur Advocate.

The Judgment of the Court was delivered by

AJAY DIGPAUL, J.:— Through the present petition, the petitioner seeks to assail the order dated 10-7-2026 passed by the learned DJ (Commercial Court -04), South East, Saket Court Complex in CS (COMM) 496/2025 whereby the learned trial court has allowed the respondent/defendant's application under Section 8 of the Arbitration and Conciliation Act, 1996[1], and has referred the matter to arbitration.

2. The petitioner has filed the underlying commercial suit for recovery seeking Rs 23,09,361 along with 12% interest per annum. The petitioner is a registered partnership firm and is in the business of trading disposable and allied products, and the respondent is the proprietor of M/S Tirupati Balaji Overseas & Anr. who are stated to be in the business of manufacture and sales of disposable products.

3. During the course of business, the parties are stated to have developed an amicable commercial relationship, and the petitioner, in April 2024, placed an order for disposable bowls and trays to the tune of approximately two crores, and paid an advance of Rs 15 lakh on 30-4-2024 and Rs 16 lakh on 22-5-2024.

4. However, it is stated by the petitioner that the last two consignments of the respondent contained not only substandard products, but the same were also priced higher than the market rate. It is further stated that the parties had an open and running account, and as per the petitioner's books of accounts, as on 15-6-2024, Rs 21,18,680 was outstanding from the respondent. Thus, the petitioner instituted the underlying commercial suit for recovery seeking Rs 23,09,361.

---

5. The respondent filed its written statement thereto and an application under Section 8 of the Arbitration Act seeking reference of the dispute to arbitration. In the written statement, the respondent contended *inter-alia* that the petitioner has refused to accept delivery of the products on baseless grounds, and that the same is causing heavy losses to the respondent as the products are lying unutilized in the respondent's godown.

6. In the application under Section 8 of the Arbitration Act, the respondent sought reference of the dispute to arbitration and placed reliance on the arbitration clause in the invoices dated 9-4-2024, 10-4-2024, 24-5-2024, 13-6-2024 and 15-6-2024 and contended that the arbitration clause was always within the knowledge of the petitioner, and the petitioner has further acted upon these invoices, thereby consenting to arbitration clause.

7. The petitioner thereafter filed their reply to the application under Section 8 contending *inter-alia* that in absence of any valid arbitration agreement within the meaning of Section 7 of the Arbitration Act, no dispute can be referred to arbitration.

8. The application under Section 8 of the Arbitration Act came to be allowed *vide* the impugned order dated 10-7-2026, and the parties were directed to seek their respective remedies under the Arbitration Act. The learned trial court, while placing reliance on the judgment of the Supreme Court in *Concrete Additives and Chemicals Pvt. Ltd.* v. *SN Engineering Services Pvt. Ltd.* and the judgments of coordinate benches of this Court in *Radico Khaitan Ltd.* v. *Harish Choudhan* and *Swastik Pipe Ltd.* v. *Shri Ram Autotech Pvt. Ltd.* noted that it is settled law that arbitration clauses in invoices are valid arbitration agreements, and thus, reference under Section 8 can be made through the same.

9. The learned counsel for the petitioner has submitted that a matter can only be referred to arbitration under Section 8 of the Arbitration Act, if it stems from a valid arbitration agreement in consonance with Section 7(3) and Section 7(4) of the Arbitration Act.

10. He has relied on Section 7(3) and (4)(a) of the Arbitration Act to submit that an arbitration agreement has to be in writing, and the agreement shall be considered to be in writing if the document is signed by the parties in terms of Section 7(4)(a). In the present case, he has submitted that the invoices stated to contain an arbitration clause cannot be considered to be a valid arbitration agreement as the same has not been signed by the petitioner herein. Consequently, since the arbitration agreement is not in consonance with Section 7 of the Arbitration Act, no orders of reference can be passed therein. Strong reliance has been placed on a coordinate bench's judgment in *Taipak Limited* v. *Ram Kishore Nagar Mal*[2] and *Mr Mohammad Eshrar Ahmed* v.

Tyshaz Buildmart India (P) Ltd.[3]

11. He has relied on the principle that arbitration is a party-centric dispute redressal mechanism, and no unwilling party can be compelled to participate in arbitration. He has submitted that there is no explicit or tacit consent by the petitioner to submit the disputes to arbitration, and that for the same reason, all the cases cited by the respondent or the learned trial court are inapplicable in the present case. Strong reliance is placed on *Taipak* (supra), *Mohammad Eshrar* (supra), *Inspiration Cloths & U* v. *Yash Traders*[4], *Priknit Retails Ltd* v. *Aneja Agencies*[5], *Indowind Energy Ltd.* v. *Wescare (I) Ltd.*[6].

12. *Per contra*, the learned counsel for the respondent, while relying on *Concrete Additives and Chemicals Pvt. Ltd.* v. *SN Engineering Services Pvt. Ltd*[7] has submitted that it is no longer *resintegra* that arbitration clauses contained in invoices are valid arbitration agreements, capable of causing reference under Section 8.

13. He has further submitted that the invoices which contain the arbitration clause forms the basis of the petitioner's case in the underlying suit for recovery, and it is now not open for the petitioner to state that he is not bound by the terms of the same invoice. He has submitted that once the existence of the invoices are admitted, the payment on previous identical invoices has been made, and the petitioner relies on the identical invoices in his suit for recovery, he cannot now state that the invoices have not been signed and thus the arbitration clause cannot now be read into.

14. Heard. Perused the records.

15. The learned counsel for the petitioner has essentially set up his case on two grounds - (a) the invoices which are purported to be arbitration agreements are not in consonance with Section 7(3) and (4) a of the Arbitration Act and (b) there is no acknowledgment of the petitioner to the invoices and no consent to participate in the arbitral proceedings.

16. The learned counsel for the petitioner has contended that the invoices have not been signed by the petitioner, and thus, the same is in contravention of Section 7(3) and (4)(*a*) of the Arbitration Act. It becomes pertinent to note whether such invoices are required to mandatorily be signed so as to be considered as a valid arbitration agreement, and whether the non-signing of the same would necessarily mean that the agreement is not an arbitration agreement. For that reason, it is apposite to note the judgment of the Supreme Court, in the case of *Caravel Shipping Services (P) Ltd.* v. *Premier Sea Foods Exim (P) Ltd.*[8].

17. In this case, a suit for recovery had been filed on the basis of a

bill of lading for the sum of Rs 26,53,593, against which an application under Section 8 had been filed stating that the printed conditions on the bill of lading had an arbitration clause. The learned Sub-Judge's court dismissed the application, and the petition under Article 227 and the review against the same also came to be dismissed.

18. The Supreme Court while allowing the appeal and setting aside the orders of the High Court *inter-alia* held as follows:

> *"7. A perusal of the same shows that the respondent has expressly agreed to be bound by the arbitration clause despite the fact that it is a printed condition annexed to the bill of lading. Secondly, it must be remembered that the respondent has itself relied upon the bill of lading as part of its cause of action to recover the sum of Rs 26,53,593 in the suit filed by it. The respondent, therefore, cannot blow hot and cold and argue that for the purpose of its suit, it will rely upon the bill of lading (though unsigned) but for the purpose of arbitration, the requirement of the Arbitration Act is that the arbitration clause should be signed.*
>
> *8. in addition, we may indicate that the law in this behalf, in* Jugal Kishore Rameshwardas *v.* Goolbhai Hormusji *is that an arbitration agreement needs to be in writing though it need not be signed. The fact that the arbitration agreement shall be in writing is continued in the 1996 Act in Section 7(3) thereof. Section 7(4) only further adds that an arbitration agreement would be found in the circumstances mentioned in the three sub clauses that make up Section 7(4). This does not mean that in all cases an arbitration agreement needs to be signed. The only pre-requisite is that it be in writing, as has been pointed out in Section 7(3)."*

(emphasis supplied)

19. Similarly, the Supreme Court in *Glencore International AG* v. *Shree Ganesh Metals*[9] while allowing the appeal against an order of the Division Bench of this Court, and directing the referral court to refer the matter to arbitration under Section 45 of the Arbitration Act, unequivocally noted that when the conduct of the parties clearly points towards acceptance of the terms of the contract containing the arbitration clause, then merely non-signing of the same would not be a bar.

20. Similarly, confronted with similar facts where the invoices contained an arbitration clause, and where similar arguments of violation of Section 7 and lack of consensus *ad-idem* was taken, a Division Bench of this Court in *Scholar Publishing House Pvt. Ltd.* v. *Khanna Traders*[10], noted that the Section 7 of the Arbitration Act does

not compel the parties to adhere to a specific form of agreement, and that an arbitration agreement can be inferred from correspondences and conduct.

21. From a conspectus of above, it becomes apparent that while it is mandatory for the arbitration agreement to be in writing, however, signing of the same is not mandatory, especially when the conduct of the parties shows an acceptance of the terms of the arbitration agreement.

22. Thus, it becomes relevant to consider whether the conduct of the parties showed an acceptance of the arbitration agreement and an intent to be governed by the Arbitration Act. However, before proceeding to consider whether the parties intended to be governed by the Arbitration Act or not, it is apposite to consider the scope of the referral court when adjudicating an application under Section 8, and whether the referral court could have undertaken such an analysis.

23. The Supreme Court in a catena of judgments viz. *Vidya Drolia* v. *Durga Trading Corporation*[11], In Re: Interplay Between arbitration agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899[12], *SBI General Insurance Co. Ltd.* v. *Krish Spinning*[13] has conclusively held that the scope of the referral court in Section 8 is that of *prima facie* examination of the validity and existence of the arbitration agreement. In the present case, when after a *prima facie* examination of the arbitration agreement, the referral court came to a conclusion regarding its validity and existence, this Court is of the opinion that it was not incumbent on the referral court to undertake an examination of whether there was any consent or intent to be governed by the Arbitration Act.

24. At this juncture, it is apposite to refer to a judgment of a coordinate bench of this Court in *Radico Khaitan Limited* v. *Harish Chouhan*[14], wherein faced with similar facts where there was an arbitration clause enshrined in the terms and conditions of the tax invoices between parties, the Court noted that it was evident from the continuous transactions between the parties, acceptance of the invoices and part-payment against the same that the parties intended to be governed by the Arbitration Act. The Court further noted that the settled position of law favours reference of the matter to arbitration in cases of doubt as to the validity and existence of the arbitration agreement.

25. Similarly, the Supreme Court in *Caravel Shipping Services (P) Ltd.* (supra) also noted that after acceptance of the unsigned bill of lading containing the arbitration clause, and the same forming the basis of the underlying suit for recovery, a party couldn't claim that there wasn't a consensus to be governed by Arbitration Act.

26. In the present case, admittedly, both the parties have been engaged in a continuous business relationship, with a running and open account, with purchase and sale of goods against the invoices containing the arbitration clause, and advance payment against the same. Furthermore, as per the plaint, admittedly, the cause of action for the underlying suit also arose upon purchase of goods against the invoices and advance payment thereto.

27. This Court is of the considered opinion that the petitioner has not only accepted the invoices and acted upon them, but has also never, up till the stage of filing a reply to the application under Section 8, raised an objection against the arbitration clause contained therein. Thus, there is a clear consent and an intent of the petitioner to be governed by the Arbitration Act.

28. In light thereof, this Court shall now analyse the precedents sought to be relied upon by the petitioner. The reliance on *Taipak* (supra) is misplaced as the same is inapplicable on facts. The coordinate bench clearly noted that there was an express stipulation in the purchase order bestowing jurisdiction to the courts of Delhi, and thus, there was no consensus *ad-idem.* Similarly, the reliance on *Mohammad Eshrar* (supra), *Inspiration Cloths* (supra) is also misplaced as therein the court noted that there was no explicit acceptance of the arbitration. A bare perusal of the numerous Supreme Court precedents makes it clear that acceptance of the arbitration agreement can also be through conduct, which is prevalent in the case at hand.

29. In view of the decision of the Supreme Court in *Caravel Shipping Services (P) Ltd.* (supra) and *Glencore International AG* (supra), the reliance on *Priknit Retails Ltd.* (supra) is also misplaced in as much as it mandates that the arbitration agreement be signed in accordance with Section 7(4)(a). It is also inapplicable on facts as the arbitration clause in the case was incomplete with blanks, and the same is not the case in the matter at hand.

30. Lastly, the reliance on the case *Indowind Energy Ltd.* (supra) is misplaced on facts as the main issue therein was regarding the impleadment of a non-signatory third-party to the arbitration proceedings.

31. In view of the above, this Court is of the opinion that there is no infirmity in the impugned order dated 10-7-2026.

32. Accordingly, the present petition is dismissed along with pending application(s), if any.

33. It is made clear that this Court has not expressed its views on the merits of the underlying dispute, and all rights and contentions are left open to be raised in the ensuing arbitral proceedings.

34. The judgment be uploaded on the website forthwith.

---

† CNR No. DLHC010357712026

[1] Hereinafter “Arbitration Act”

[2] OMP No. 361/2001

[3] OMP (T) (COMM) 105/2023

[4] (2014 SCC OnLine Cal 19825)

[5] OMP (COMM) 374/2016

[6] Civil Appeal No. 3874/2010

[7] *Civil Appeal No. 7858/2023*

[8] (2019) 11 SCC 461 : (2019) 4 SCC (Civ) 720

[9] 2025 SCC OnLine SC 1815

[10] FAO (OS) No. 184/2013

[11] (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549

[12] (2024) 6 SCC 1

[13] Civil Appeal No. 7821/2024

[14] 2025 SCC OnLine Del 1675

§ 2026:DHC:7050