



PSL Advocates
& Solicitors

**A Tax Invoice containing an Arbitration Clause does not constitute
an Arbitration Agreement**

Concrete Additives & Chemicals Pvt. Ltd. v. S N Engineering Services Pvt. Ltd.

Case No.	Arbitration Application (L.) No.23207/2021
Date	17 January 2022
Court	High Court of Bombay
Coram	Hon'ble Mr. Justice G.S. Kulkarni

1. BRIEF FACTS:

- 1.1 S N Engineering Services Pvt. Ltd. (**“Respondent”**) had issued certain purchase orders towards Concrete Additives and Chemicals Pvt. Ltd. (**“Applicant”**).
- 1.2 In execution of the aforesaid purchase orders, the Applicant issued tax invoices which contained a “terms and conditions” column which mentioned, that in case of any dispute arises between the parties a sole Arbitrator will be appointed by the Applicant and Arbitration Proceedings will be governed by the Arbitration and Conciliation Act, 1996 (**“Act”**).
- 1.3 The Applicant was of the view that as the Respondent had accepted the tax invoices therefore a valid Arbitration Agreement between them was to be presumed in existence.
- 1.4 Following a disagreement between the parties over the purchase orders issued by the Respondent, the Applicant filed an application before the Hon’ble High Court of Judicature at Bombay (**“High Court”**) under Section 11 of the Act for appointment of an Arbitral Tribunal to resolve the dispute.

2. ISSUE RAISED:

- Whether acceptance of tax invoices containing reference to Arbitration Proceedings establishes the existence of an Arbitration Agreement between the parties?

3. DECISION OF THE COURT:

- 3.1 The Hon’ble High Court observed that the contract between both the parties was born out of the purchase orders issued by the Respondent and it did not contain any kind of reference to an Arbitration Agreement. The High Court was of the view that the act of issuing tax invoices under which Arbitration Clause was mentioned was a unilateral act conducted by the Applicant.
- 3.2 The Hon’ble High Court held that the Applicant's tax invoices which contained the terms for Arbitration Proceedings will not be considered as an Arbitration Agreement under Section 7 of the Act. The High Court also noted that no conscious agreement was made between the parties which indicated that they wanted to resolve the dispute through Arbitration.
- 3.3 The Hon’ble High Court observed that the Respondent accepted the tax invoice which necessarily does not mean that an Arbitration Agreement was established between the parties. Under Section 7 of the Act, unilateral invoices cannot result in an Arbitration Agreement between the parties. The Respondent accepted the tax invoices solely for the acceptance of the items delivered and the payment made thereunder and not for determination of the existence of an Arbitration Agreement.

4. PSL OPINION:

- 4.1 The present judgement has emphasised upon a rational application of mind as to when Arbitral Tribunal can be constituted in order to resolve the dispute between the parties. It is important to note that Arbitral tribunal will be formed only when an Arbitration Agreement is in existence and the said Agreement is born out of a valid contract which does not depends upon the ancillary factors for determining its validity.