



July 2025

Calcutta High Court affirms primacy of arbitration clause in purchase order over jurisdiction clause in tax invoice

On June 30, 2025, the Hon'ble Calcutta High Court ("**Calcutta HC**") in the case of ***Super Smelters Limited vs. Universal Cables Limited***¹ referred the parties to arbitration basis an arbitration clause contained in the purchase order. Calcutta HC held that a purchase order is the main contract or the principal agreement between the parties. The Calcutta HC also reiterated that conduct and correspondence can establish a binding arbitration agreement under the provisions of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**").

Brief facts

1. Super Smelters Limited ("**SSL**") floated a tender inviting quotations for design, manufacture, supply, testing and commissioning of capacitor panels for its plant. Universal Cables Limited ("**UCL**") submitted its commercial offer, which was accepted by SSL. Accordingly, SSL issued a purchase order dated September 6, 2019 in favour of UCL ("**Purchase Order**") which was accepted by UCL without any demurer or dispute. The dispute resolution mechanism in the Purchase Order provided for resolution of any disputes between the parties through arbitration.
2. On January 13, 2021, UCL issued a tax invoice upon SSL ("**Tax Invoice**"). The Tax Invoice did not contain an arbitration clause and stated that the courts in Satna will have exclusive jurisdiction in case of any disputes between the parties.
3. In terms of the Purchase Order, UCL submitted its drawings which were approved by SSL. Thereafter, the payments as per the milestones set out in the Purchase Order were also made by SSL to UCL.
4. As the capacitor panels received by SSL from UCL on January 23, 2021, began malfunctioning during trial runs at SSL's plant, SSL raised a grievance. To resolve the same, several meetings were held between the parties from December 2, 2021, to September 16, 2022.
5. SSL contended that during the meetings, it was agreed that UCL would resolve the issues with the capacitor panels and that the same would be made functional to their optimum level. However, UCL failed to discharge its obligations and cure the issues with the capacitor panels. SSL contended that as per the terms of the Purchase order, UCL was required to replace 100% of the defective capacitor panels within 3 (three) years of commissioning.
6. UCL contended that there were issues with SSL's plant's electrical systems due to which the capacitor panels were malfunctioning and accordingly, refused to replace the capacitor panels.

¹ AP-Com. No. 470 of 2024

7. Owing to the above, on December 14, 2023, SSL terminated the Purchase Order and called upon UCL to refund of the entire consideration paid under the Purchase Order being INR 1,97,06,000 (Indian Rupees one crore ninety-seven lakh six thousand) along with interest at the rate of 24% per annum from January 23, 2021, till the date of actual payment. UCL responded to the termination notice refuting the allegations made by SSL.
8. In view of the above, disputes arose between the parties and on January 12, 2024, SSL invoked the arbitration clause in the Purchase Order. UCL responded to the invocation notice contending that the arbitration clause contained in the Purchase Order was subsumed by the jurisdiction clause contained in the subsequently issued Tax Invoice which referred to courts in Satna to have exclusive jurisdiction.
9. In view of UCL's failure to mutually appoint an arbitration, SSL filed an application under Section 11² of the Arbitration Act seeking appointment of an arbitrator in terms of the arbitration clause contained in the Purchase Order.

Issue

Whether the parties could be referred to arbitration basis the arbitration clause contained in the Purchase Order, despite the existence of a conflicting jurisdiction clause contained in a subsequent Tax Invoice?

Analysis and findings

Whilst allowing the application under Section 11 of the Arbitration Act, the Calcutta HC held as follows:

1. the Purchase Order, exchanged by SSL and acted upon by UCL, was the principal contract between the parties and contained a valid arbitration agreement. The Purchase Order set out all the commercial and general terms (including Clause 6 (arbitration clause)) and UCL acknowledged it by requesting advance payments and raising proforma invoices accordingly;
2. under Section 7 of the Arbitration Act, an arbitration agreement can be concluded by electronic communication, and here the parties' conduct (email exchanges, invoice requests, drawing approvals and a Goods Receipt Note) demonstrated a '*consensus ad idem*' on the Purchase Order's terms. In short, UCL's unchallenged performance under the Purchase Order, without any written objection to its terms, established that the Purchase Order (with its arbitration clause) governed the transaction;
3. by contrast, the Tax Invoice issued later was treated as an ancillary document. The Calcutta HC noted that the invoice merely described the goods and payment terms and did not contain any arbitration clause. Critically, the invoice's unilateral jurisdiction clause could not override the Purchase Order's arbitration clause. The Purchase Order expressly subjected all disputes to arbitration with its seat in Kolkata, and in any event the cause of action arose at Jamuria (Burdwan) within Calcutta High Court's jurisdiction. Thus, the Calcutta High Court held that the civil courts at Satna were not competent to hear the dispute;
4. applying the *prima facie* standard under Section 11 of the Arbitration Act, the Calcutta HC noted that the Purchase Order's arbitration clause clearly covered the disputes and that no valid agreement had replaced it. The Calcutta HC explicitly observed that any contention of novation or jurisdictional objection was a matter for the arbitrator, not for the court at the Section 11 stage. In its *prima facie* view, all of the terms of the Purchase Order (including arbitration) "*will prevail over and supersede*" the terms of the subsequent Tax Invoice; and
5. accordingly, the Calcutta HC held that the Purchase Order is the main contract and an all-encompassing agreement. As the Tax Invoice did not expressly state that it 'supersedes' the Purchase Order, the issue of novation or amendment was left open to be decided by the arbitrator.

² Under Section 11 of the Arbitration Act, a High Court or the Supreme Court (depending on the nature of arbitration) is empowered to appoint an arbitrator where parties fail to do so as per their agreed procedure. At this stage, the court's inquiry is limited to a preliminary/*prima facie* determination of whether an arbitration agreement exists and not the merits of the underlying dispute.

Conclusion

The judgment underscores that a comprehensive purchase order exchanged and acted upon by both parties can constitute a binding arbitration agreement, in accordance with the terms of the Arbitration Act. By upholding the arbitration agreement contained in the Purchase Order, the Calcutta HC has made clear that mere inclusion of a later jurisdiction clause by a supplier in his tax invoice cannot defeat an earlier, agreed upon arbitration agreement.

By way of the judgment, the Calcutta HC has clarified that merely issuing an invoice with a different jurisdiction or arbitration clause will not automatically change the dispute resolution mechanism unless the said terms of the contract are re-opened or altered by mutual consent by the parties. In a nutshell, an agreed arbitration clause in the principal agreement will govern the parties unless expressly superseded.

The judgment also underscores the limited enquiry to be conducted by a court under Section 11 of the Arbitration Act, i.e. confining itself only to the existence of the arbitration agreement rather than an inquiry on the merits of the dispute. This approach reaffirms that under Section 11 of the Arbitration Act, the courts will enforce a clear arbitration clause in the underlying contract. Any dispute about whether a later document amended the arbitration agreement may be decided by the arbitrator.

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This Prism is prepared by:



Hormuz Mehta
Partner



Ahsan Allana
Senior Associate



Avantika Kadapatti
Associate



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