

2. The purchase orders are annexed to the application at page 22 onwards (Exhibit A-1 to Exhibit A-13). A perusal of the purchase orders in no manner indicates that there is an arbitration agreement between the parties. However, it appears that in executing the purchase orders the applicant issued tax invoices and in the tax invoices, which are the

printed forms, in a column “Terms & conditions” the following clause was incorporated :-

“1) All or any disputes or differences that may arise between the parties hereto shall be referred to the arbitration of a sole arbitrator to be appointed by CONCRETE ADDITIVES & CHEMICALS PVT. LTD. The arbitration proceedings shall be governed by the provisions of the Arbitration & Conciliation Act, 1996. The venue of the arbitration shall be at Mumbai.”

3. It is on the basis of the tax invoices, the applicant is before the Court to contend that there is an arbitration agreement between the parties. Such a contention as urged on behalf of the applicant cannot be accepted as issuance of tax invoice is certainly required to be held to be an unilateral act on the part of the applicant. The contract between the parties is actually born under the purchase orders. The purchase orders do not contain or make any reference to an arbitration agreement between the parties.

4. To accept the applicant’s case that there is an arbitration agreement between the parties in my opinion, would be in the teeth of Section 7 of the Act which provides as to what would constitute an arbitration agreement. In the present context, it can be clearly held that there is no conscious agreement between the parties to refer the disputes for adjudication in arbitration. Merely because the tax invoices which are in response to the purchase orders provide for an arbitration, certainly such invoices do not bring about an arbitration agreement as

contemplated under Section 7 of the Act.

5. Mr. Menon's contention that the tax invoices have been accepted by the respondent and therefore it is required to be presumed that there is an arbitration agreement between the parties also cannot be accepted. The acceptance of the tax invoices is required to be held to be relevant accepting the delivery of the goods and the payment to be made under the invoices. Certainly it cannot be accepted that the unilateral invoices brought about an arbitration agreement between the parties as section 7 would provide.

6. In the above circumstances, in my opinion, there is no arbitration agreement between the parties. The petition is wholly without any merit. It is accordingly rejected. No costs.

7. Needless to observe that the petitioner would be at liberty to pursue appropriate remedies as permissible to it in law.

[G.S. KULKARNI, J.]