



ARB.O.P(COM.DIV).No.78 of 2025

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

ARB.O.P(COM.DIV).No.78 of 2025

M/s.Vikram Sarabhai Space,
Centre rep.by its Senior,
Purchase and Stores Officer,
CMSE/VSSC,
Department of Space,
Thiruvananthapuram-695 013.

Petitioner

Vs.

1.M/s.Aspinwall and Company Limited,
Rep.by its Managing Director,
Subramanian Road,
P.O.Box, No.560,
Willingdon Island,
Kochi-682 003,
Kerala State.

2.M/s.All Cargo Logistics Limited,
Rep.by its Managing Director,
No.54/28, II Floor, SBL House,
Monteith Road,
Chennai-600 008.

3.The Commissioner of Customs,
Chennai Port, Chennai.

4.Pietro Carnaghi S.P.A.,
Via Salvodacquisto 7,
20020, Villa Cortese (MI), 2020,
Italy.

Respondents



ARB.O.P(COM.DIV).No.78 of 2025

Prayer: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, read with Clause 2 of the Appointment of Arbitrators by the Chief Justice of Madras High Court Scheme, 1996, to pass an order appointing a Sole Arbitrator to adjudicate all the disputes between the parties arising from Purchase Order dated 11.11.2019 and Clause 16.0 of the Agreement dated 01.05.2020 and pass a final award with respect to the aforesaid disputes and direct the respondents to pay the cost of the present petition.

For Petitioner : Mr.ARL.Sundaresan
Additional Solicitor General
assisted by
Mr.K.Ravindranath
Senior Panel Counsel

For Respondents : Mr.Jose
for M/s.King and Partridge
for R1
Mr.Jidesh Kumar.M.D
for R2
Mr.S.R.Sundar for R3
Mr.Monark Gahlot for R4

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] for appointing a Sole Arbitrator to adjudicate all the disputes between the parties arising from a Purchase Order dated 11.11.2019 and Clause 16.0 of the Agreement dated 01.05.2020.



WEB COPY

2. Heard Mr.ARL.Sundaresan, learned Additional Solicitor General representing Mr.K.Ravindranath, learned Senior Panel Counsel appearing for the petitioner, Mr.Jose, learned counsel appearing for the first respondent, Mr.M.D.Jidesh Kumar, learned counsel appearing for the second respondent, Mr.S.R.Sundar, learned counsel appearing for the third respondent and Mr.Monark Gahlot, learned counsel appearing for the fourth respondent.

3. The petitioner had placed the Purchase Order dated 11.11.2019 with the fourth respondent for supply, installation and commissioning of 4M Dia CNC Vertical Turning and Machining Centre Model AC 46 TM at a total sum of Rs.26.9 Crores. The petitioner entered into a Rate Contract with the first respondent for the Customs Clearance of various consignments. The petitioner also arranged for the payment of customs duty enabling clearance of the consignment from Chennai Customs. The first respondent informed the petitioner that the Customs Nominated Warehouse was entrusted through the second respondent and they will be responsible for the movement of the Cargo from the sea port to CFS/ISD.



WEB COPY

4. The further case of the petitioner is that while the cargo was taken from the Warehouse in one of the Trailer Trucks, it overturned on 31.12.2021 and the equipment in the container was damaged.

5. A detailed inspection was carried out by a team and the report was submitted observing the damages caused.

6. It is under these circumstances, the first respondent issued the trigger notice dated 19.09.2024 under Section 21 of the Act suggesting the name of four Retired Judges to be considered for appointment as Sole Arbitrators. Notice was received by the first respondent and a reply was sent on 16.10.2024. Since the first respondent took a stand that if at all there is any claim, the same will lie only against the second respondent being the Customs Cargo Services Provider and the first respondent denied their liability, the present petition has been filed before this Court seeking for appointment of the Sole Arbitrator.

7. This Court carefully considered the submissions made on either side and the materials available on record.



WEB COPY

8. There is no dispute with regard to the fact that the agreement/contract is between the petitioner and the first respondent. The second respondent is not even a party to the agreement. The first respondent was the Clearing and Forwarding agent and the second respondent was involved in logistic services. The third respondent is a formal party and the fourth respondent was the original supplier who had already supplied the equipments and is a foreign party.

9. Insofar as the agreement between the parties which is the Rate Contract dated 01.05.2020 entered into between the petitioner and the first respondent is concerned, Clause 16.0 provides the arbitration clause. On carefully going through the same, it is seen that the seat of arbitration is at Bengaluru. Hence, the application filed before this Court under Section 11 of the Act, is not sustainable.

10. Apart from the above, the first respondent has denied their liability on the ground that they have already completed their responsibility as Forwarding Agent and the accident had taken place only when the second respondent who provided the logistic services was



WEB COPY

carrying the equipment. Therefore, if at all there is any claim, it can only be made against the second respondent. Since the second respondent is not a party to the agreement, the arbitration clause contained in the Rate Contract between the petitioner and the first respondent cannot be put against the second respondent, since he is not bound by the contract. Therefore, if at all there is any claim for the petitioner, it can be only by way of an independent civil remedy before the appropriate Court.

11. Insofar as the fourth respondent is concerned, they are the suppliers and in any case, the fourth respondent is a foreign party and if at all any arbitrator has to be appointed, the petitioner must only approach the Apex Court.

12. In the light of the above discussions, the relief as sought for by the petitioner cannot be granted by this Court. It is left open to the petitioner to work out their remedy in the manner known to law before the appropriate Forum and all the claims and the defence available to all parties concerned are left open.



ARB.O.P(COM.DIV).No.78 of 2025

WEB COPY

13. The learned Additional Solicitor General appearing on behalf of the petitioner submitted that the period during which the petitioner was bonafidely prosecuting this petition should be excluded while calculating the limitation under Section 14 of the Limitation Act. It is left open to the petitioner to raise the said ground before the appropriate Forum and the same will be dealt with in accordance with law.

14. Accordingly, this Arbitration Original Petition is disposed of. There shall be no order as to costs.

08-09-2025

ssb

Index: Yes/No

Speaking order/Non-speaking order

NCC: Yes/No

To

The Commissioner of Customs,
Chennai Port, Chennai.



WEB COPY



ARB.O.P(COM.DIV).No.78 of 2025

N.ANAND VENKATESH, J

ssb

ARB.O.P(COM.DIV).No.78 of 2025

08.09.2025