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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (E) (COMM.) 2/2025

DELHI TRANSPORT CORPORATION.....Petitioner

Through: Mr. Rikky Gupta (standing
counsel, DTC) and Ms.
Ananya Singh, Advs.

versus

EBIXCASH MOBILITY SOFTWARE PVT. LTD.
.....Respondent

Through: Ms. Ankita Singhanian,
Mr. Chitvan Singhal and
Ms. Muskan Gupta,
Advs. (through VC)

CORAM:
JOINT REGISTRAR (JUDICIAL) MS. SHUCHI
LALER (DHJS)

% **ORDER**
25.02.2025

1. The present is a petition under Section 27 (1) of Arbitration and Conciliation Act, 1996 seeking assistance of the Court for summoning of witnesses. By virtue of Rule 3 (61) Chapter II of Delhi High Court (Original Side) Rules, 2018, the Hon'ble Judges, in meeting held on 09.07.2019 delegated the power to deal with applications under Section 27 of Arbitration and Conciliation Act to Registrar.

2. Vide order dated 15.11.2024, Hon'ble Arbitrator had allowed the summoning of five witnesses for 27th and 28th March, 2025. Based on the aforesaid order, the petitioner



has filed the present application seeking issuance of summons to the aforesaid witnesses to present themselves for recording of their evidence along with summoned record at the Arbitration venue. Order dated 15.11.2024 of Hon'ble Arbitrator reads as under:-

1. The Respondent has filed this application for summoning following five witnesses in part II of its list of witnesses:-

- (i) Concerned CBI Officer, (Anti-corruption branch)
- (ii) Concerned Officer from Standardisation Testing and Quality Certification (STQC)
- (iii) Concerned Officer from National Informatics Centre (NIC)
- (iv) Concerned Officer from Delhi Metro Rail Corporation (DMRC)
- (v) Concerned Officer from Delhi Integrated Multi Modal Transit System Ltd (DIMTS)

2. The Claimant is opposing this application on various grounds *inter-alia* that the Respondent has not shown the relevance of those witnesses; the Respondent has not made any endeavour to produce these witnesses at its own responsibility; two out of five witnesses are within the control of

Delhi Government which is the parent body of the Respondent; the witnesses are irrelevant and unnecessary; the Respondent has not given. The names of any particular person competent to depose; the Respondent has not shown as to why the evidence sought to be produced by those witnesses cannot be proved by Respondent itself; the summoning of the those witnesses would delay the Arbitration proceedings; the reasons provided for summoning of witnesses are misconceived; the allegations of Claimant's high official having cheated the financial institution, is no relevance etc.

3. On consideration of the rival contention of the parties, this Tribunal is of the *prima facie* view that the Respondent has given the detailed reasons for summoning these witnesses in paras 6(a) to 6(e) of the application which are not being reproduced here for the sake of brevity. The reasons given by the Respondent for summoning the five witnesses cannot be said to be irrelevant. The Respondent has made serious allegations against the Claimant particularly that CBI has registered FIR against the high officers of the Claimant on the ground of cheating 'financial institutions, which cannot be said to be irrelevant. It is well settled that each party has a right to take decision with respect to the witnesses for being examined.

4. This Tribunal do not find any merit in the objections taken by the Respondent to oppose the examining of the witnesses by the Respondent. The application is allowed and the Respondent is permitted to approach the Hon'ble High Court for summoning the five witnesses for appearing before this Tribunal on 25th November, 2024 and 26th November, 2024.

3. Reply to the petition has been filed by the



respondent wherein it is mentioned that the petitioner has deliberately not filed in the present petition, the copy of reply of respondent to the application for summoning of witnesses, which was filed before Hon'ble Arbitrator. It is averred that the witnesses, who are sought to be summoned are irrelevant and there is no reason for recording of oral evidence of the concerned witnesses. The respondent states that the dispute between the parties is governed by written agreement dated 30.09.2015 and no element of oral evidence can change the written contract. It is further stated that the petitioner did not make any endeavor to produce these witnesses by itself and has failed to demonstrate as to what is the nature of evidence that is sought to be adduced through the proper witnesses. The respondent alleges that the petitioner has failed to mention the name of the witnesses and has only given the name of the concerned department/agencies. Moreover, it is pleaded that out of five witnesses, two function within the control of Government of Delhi, which is the parent body of petitioner/DTC. The respondent further alleges that learned sole Arbitrator has mechanically allowed the application without any application of mind and this court is not bound to act on the request of the Arbitral Tribunal. Dismissal of the present petition has been prayed for.

4. The petitioner has filed rejoinder wherein it is mentioned that learned sole Arbitrator has, on due consideration of relevant facts and circumstances, has allowed the application and directed the summoning of the witnesses, thus, objections raised by the respondent are not maintainable and amounts to seeking review of the order



passed by learned Arbitrator, which is impermissible in law. It is prayed that the petition be allowed and summons be issued to the witnesses.

5. Rival submissions advanced at bar have been heard at length and record perused.

6. Section 27 of Arbitration and Conciliation Act, 1996 envisages an application to be made to the court to seek assistance in taking evidence. The said provision reads as under:-

27. Court assistance in taking evidence.__(1) The arbitral tribunal, or a part with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application shall specify-

(a) the names and address of the parties and the arbitrators;

(b) the general nature of the claim and the relief sought;

(c) the evidence to be obtained, in particular-

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required.

(ii) the description of any document to be produced or property to be inspected.

(3) The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

(6) In this section the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents".

7. Learned counsel for respondent submits that the order dated 15.11.2024 of the Hon'ble Arbitrator has been passed in a mechanical manner, it is a non-speaking order and does not reflect application of mind as to relevancy of the evidence of the witnesses, whom the petitioner seeks to



summon. She has placed reliance on the judgment of “**Hindustan Petroleum Corporation Limited Vs. Ashok Kumar Garg, 2006 (91) DRJ 591**” and “**Steel Authority of India Limited Vs. Uniper Global Commodities 2023 SCC Online Delhi 7586**”.

8. The Hon’ble Court while referring to the aforesaid judgments of “**Hindustan Petroleum (Supra) and Steel Authority of India Limited (Supra) in BPT Infra Projects Private Limited Vs. Indraprastha ICE and Cold Storage Private Limited 2024 SCC Online Del 4755**”, observed that these judgments are distinguishable on facts. In para no.24 to 26, it was held as under:-

24. As has been held by the coordinate bench in SAIL, this Court cannot deal with an application under Section 27(1) of the 1996 Act as though it were an appeal against an order of Arbitral Tribunal. The discretion as to whether to summon, or not to summon, a witness as cited by a party, vests in the learned Arbitral Tribunal.

25. Section 54 of the 1996 Act very clearly proscribes interference by courts with the arbitral process save and except to the extent specified in the Act. The provisions of the Act must be strictly read, keeping in mind the avowed objective of the 1996 Act, which is to promote the arbitral process and insulate it, as far as possible, from interference by the judiciary. 26. The learned Arbitral Tribunal having, while passing the order dated 15 May 2024, recorded a finding that the evidence of Mr. D.P. Singh and Mr. S.C. Jain is relevant in the present case and the reasons for summoning the said witnesses having been clearly set out in the application filed by the petitioner under Section 27(1), any interference by this Court, at this juncture, would fly in the teeth of Section 5 of the 1996 Act and would also be an affront to the principle of arbitral autonomy, which permeates the 1996 Act throughout.

9. Even in the present case, Hon’ble Arbitrator has not passed order dated 15.11.2024 in a mechanical manner rather all the objections of the respondent have been specifically mentioned, taken into consideration, thereafter, Hon’ble Arbitrator gave detailed reasons and came to the conclusion that the summoning of the witnesses is relevant for the Arbitration proceeding. Approval was also given to the petitioner to approach the Hon’ble Court for summoning of the witnesses.



10. The respondent had reiterated the same pleas before Hon'ble Arbitrator and the same were taken into consideration, so it cannot be permitted to reiterate the same pleas before this court. The present proceedings cannot be converted into an appeal in disguise.

11. The contents of the application filed by petitioner before the Hon'ble Arbitrator seeking summoning of witnesses, shows that in para 6, against each witness, detailed reason and requirement for summoning of the said witness is stated. The reasons mentioned in para 6 were taken into account by the Hon'ble Arbitrator (in para 3 of order dated 15.11.2024) while noting that the reason stated by petitioner in para 6 for summoning of five witnesses cannot be said to be irrelevant.

12. The reliance placed by respondent on para 13 of judgment titled "Steel Authority of India Limited Vs. Uniper Global Commodities 2023 SCC Online Delhi 7586". is misfounded as the order of Hon'ble Arbitrator dated 15.11.2024 is a speaking order clearly mentioning that the Hon'ble Arbitrator is prima facie satisfied that the witnesses summoned by the petitioner are not irrelevant.

13. This court finds absolutely no reason to disallow the present petition under Section 27 (1) of Arbitration and Conciliation Act, 1996 seeking the assistance of this Hon'ble Court for summoning of witnesses. Accordingly the application is allowed. Registry shall issue summons to the witnesses at serial nos. 1 to 3 for 27.03.2025 and witnesses at serial nos. 4 & 5 for 28.03.2025 for producing the relevant documents before learned Arbitrator on filing of PF by the petitioner.



14. The complete details of the record and the address of the witnesses be mentioned on the PF form along with the photocopy of the relevant documents.
15. The petition stands disposed off. File be sent back to the concerned official of the registry for consignment.

**SHUCHI LALER (DHJS),
JOINT REGISTRAR (JUDICIAL)
FEBRUARY 25, 2025/cd**

Click here to check corrigendum, if any