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

+ O.M.P. (T) (COMM.) 12/2025

INDIGRID TECHNOLOGY PVT LTD

.....Petitioner

Through: Mr. Uttam Dutt, Senior Advocate
with Ms. Sonakshi Singh and Mr. Kumar Bhaskar,
Advocates.

versus

ERADICATUS INFECTUS PVT LTD

.....Respondent

Through: Ms. Shivani Chawla, Mr. Vidit Anand
and Mr. Rhythm Katyal, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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15.10.2025

1. This petition is filed on behalf of the Petitioner under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 ('1996 Act') for terminating the mandate of the learned Sole Arbitrator and appointment of a Substitute Arbitrator as also for referring the disputes to the Substitute Arbitrator without being influenced by the disparaging observations in the impugned order dated 18.11.2024.
2. To the extent necessary, facts are that parties entered into an agreement dated 10.05.2021 under which Respondent was to procure 1,00,000 BiPAP machines from the Petitioner in 6 months in batches @ Rs.15,000/- per unit. In terms of the Term Sheet dated 10.05.2021, Petitioner issued Performa Invoice for a batch of 5000 BiPAP machines @ Rs.17,000/- to the Respondent on 11.05.2021 and Respondent issued a Purchase Order vide email dated 13.05.2021. Disputes arose between the



parties, each one blaming the other for breach of the agreement and as per the Petitioner, Respondent failed to make the outstanding payments. Petitioner provided 1000 BiPAP machines out of the first tranche of 5000 machines by 08.07.2021 even after the disputes arose, but in breach of clause 4.4 of Term Sheet, Respondent failed to return the PDCs and filed a criminal case under Section 138 of the Negotiable Instruments Act, 1881. Petitioner made further supply of 1200 units of BiPAP machines but vide email dated 31.07.2021, Respondent raised issues about the quality of the machines and also filed a criminal complaint alleging cheating and criminal conspiracy, in which status report was filed by EOW, stating that the disputes were civil/commercial in nature and no criminality could be attached.

3. Disputes having arisen, Petitioner sent notice invoking arbitration dated 15.12.2021 to the Respondent under Section 21 of 1996 Act for mutually appointing an arbitrator to adjudicate the disputes, however, on failure of the Respondent to consent, Petitioner filed a petition in this Court being ARB P. No. 234/2022, which was allowed on 06.02.2024 and Sole Arbitrator was appointed. Petitioner filed Statement of Claim and Respondent filed Statement of Defence. Respondent filed an application under Section 16 of 1996 Act, to which reply was filed by the Petitioner. Petitioner was informed by Delhi International Arbitration Centre ('DIAC') of the Arbitral fee payable by both parties and while Petitioner made part payment of its share of the fee, Respondent declined to pay and requested the Arbitrator to direct the Petitioner to pay Respondent's share of the arbitral fee. On 21.09.2024, Arbitrator passed an order directing Petitioner to pay both its share of the fee as also Respondent's share, amounting to Rs.30,69,120/—.



4. Petitioner avers that it did not have the financial capacity to pay the fee for both parties and hence, it moved an application seeking amendment of SOC and waiver of part of Claim No.5 relating to loss of profit, by reducing the amount claimed from Rs.23,10,20,800/- to Rs.9,50,800/- and seeking re-calculation of Arbitrator's fees as per Rule 18.2 of DIAC (Arbitration Proceedings) Rules, 2023 ('2023 Rules'). On 23.10.2024, Arbitrator dismissed the Section 16 application filed by the Respondent and on 18.11.2024 the Arbitrator terminated the arbitral proceedings under Section 38 of 1996 Act and Rule 33.5 of 2023 Rules on ground of non-payment of Arbitral Fee, but without considering the amendment application, according to the Petitioner. In this backdrop, Petitioner filed this petition for appointment of substitute Arbitrator with a further direction to decide the amendment application to amend Claim No.5 and reduce the amount claimed.

5. At the outset, objection is raised by learned counsel for the Respondent to the maintainability of this petition under Sections 14 and 15 of 1996 Act, in response to which Mr. Dutt, learned Senior Counsel for the Petitioner refers to judgment of the Supreme Court in ***Lalit Kumar V. Sanghavi (Dead) through LRs Neeta Lalit Kumar Sanghavi and Another v. Dharamdas V. Sanghavi and Others, (2014) 7 SCC 255***, where the Supreme Court held that by virtue of Section 32(3), on termination of arbitral proceedings, mandate of the Arbitral Tribunal also comes to an end and having regard to the scheme of the 1996 Act and more particularly, on the cumulative reading of Sections 32 and 14 thereof, the question whether the mandate of the Arbitrator stood legally terminated or not, can be examined by the Court under Section 14(2).

6. From a plain reading of the impugned order, it is evident that the



learned Arbitrator has terminated the Arbitral proceedings due to non-payment of fees despite several opportunities and delay in completion of pleadings, observing that proceedings were being dragged on one pretext or the other by the Petitioner and the attempt to seek amendment in the SOC by reducing the claim as originally sought would show that the claim at its very threshold was not *bona fide*. The order terminating the proceedings, amounts to termination of the mandate of the Arbitrator and is thus amenable to challenge under Section 14 of 1996 Act, as held by the Supreme Court in **Lalit Kumar (supra)** and relevant passages are extracted hereunder:-

“10.3. Section 14 declares that “the mandate of an arbitrator shall terminate” in the circumstances specified therein. They are—

“14. Failure or impossibility to act.—(1) The mandate of an arbitrator shall terminate if—

- (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and*
- (b) he withdraws from his office or the parties agree to the termination of his mandate.*

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the court to decide on the termination of the mandate.”

Section 14(2) provides that if there is any controversy regarding the termination of the mandate of the arbitrator on any of the grounds referred to in clause (a) then an application may be made to the Court — “to decide on the termination of the mandate”.

11. Section 32 of the Act on the other hand deals with the termination of arbitral proceedings. From the language of Section 32, it can be seen that arbitral proceedings get terminated either in the making of the final arbitral award or by an order of the Arbitral Tribunal under sub-section (2). Sub-section (2) provides that the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings in the three contingencies mentioned in clauses (a) to (c) thereof.

12. On the facts of the present case, the applicability of clauses (a) and (b) of Section 32(2) is clearly ruled out and we are of the opinion that the order dated 29-10-2007 by which the Tribunal terminated the arbitral proceedings could only fall within the scope of Section 32, sub-section (2), clause (c) i.e. the continuation of the proceedings has become impossible.



By virtue of Section 32(3), on the termination of the arbitral proceedings, the mandate of the Arbitral Tribunal also comes to an end. Having regard to the scheme of the Act and more particularly on a cumulative reading of Section 32 and Section 14, the question whether the mandate of the arbitrator stood legally terminated or not can be examined by the court “as provided under Section 14(2)”.

13. The expression “court” is a defined expression under Section 2(1)(e) which reads as follows:

“2. (1)(e) ‘Court’ means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;”

14. Therefore, we are of the opinion, the apprehension of the appellant that they would be left remediless, is without basis in law.

15. The appellants are at liberty to approach the appropriate court for the determination of the legality of the termination of the mandate of the Arbitral Tribunal which in turn is based upon an order dated 29-10-2007 by which the arbitral proceedings were terminated.”

7. The objection to the maintainability of the petition is thus overruled and it is held that this Court has the jurisdiction under Section 14 to examine the validity and legality of the impugned order, whereby the learned Arbitrator has terminated the arbitral proceedings and thereby his own mandate for non-payment of Arbitrator’s fee and delay in completing the pleadings.

8. On merits, it is urged on behalf of the Petitioner that by application dated 02.10.2024, Petitioner sought amendment of SOC to reduce the amount claimed under Claim No.5 and to re-calculate the arbitral fee with further prayer to grant time of one week to pay the balance fee. Rule 18.2 of 2023 Rules gives power to DIAC to adjust the fee of the Tribunal if amendment is allowed in the pleadings. The Arbitrator did not even issue notice on the amendment application and without calling upon the



Respondent to file reply; giving opportunity of hearing to the petitioner on the amendment application; and deciding the same, the arbitral proceedings were terminated erroneously. It was incumbent upon the Arbitrator to decide the amendment application once the same was filed, more so, when law permits a claimant to reduce the original value of the claims. It is argued that the impugned order be set aside and a substitute arbitrator be appointed with a direction to decide the amendment application.

9. Counsel for the Respondent argues that the Arbitrator was justified in terminating the proceedings since Petitioner was not willing to pay the arbitral fee calculated on the original claims. It was rightly observed that the very fact that Petitioner sought to reduce the claims showed that the original claims were not *bona fide* and inflated and once the proceedings are terminated by the Arbitrator, it goes without saying that the amendment application was dismissed *albeit* there may not be a clear finding to that effect.

10. Having heard learned Senior Counsel for the Petitioner and learned counsel for the Respondent, I am of the view that there is merit in the contention of the Petitioner that there is no decision on the amendment application. No notice was issued on the application and Respondent was never called upon to file the reply. While Arbitrator has made observations that Petitioner was delaying the proceedings on one pretext or the other as also that the attempt to reduce the claims shows that the original claims were not *bona fide*, the fact remains that the application was not decided on merits. Petitioner is right in arguing that there is no bar in law in reducing the value of claims and thus once an application was filed for amendment, the same ought to have been considered and decided one way or the other. Termination of the arbitral proceedings is thus unjustified and impugned



order deserves to be set aside. As rightly urged by Mr. Dutt, once the Arbitrator has terminated his mandate, substitute Arbitrator needs to be appointed.

11. Accordingly, impugned order dated 18.11.2024 is set aside and the adverse observations against the Petitioner are expunged. Mr. Neeraj Malhotra, Senior Advocate (Mobile No.9811091991) is appointed as a Substitute Arbitrator to adjudicate the disputes between the parties. Learned Arbitrator shall decide the amendment application filed by the Petitioner after giving opportunity of filing a reply thereto to the Respondent as also hearing both the parties and arbitral fee shall be calculated depending on the decision on the application.

12. Arbitration proceedings will be held under the aegis of DIAC and as per its Rules. Fee of the Arbitrator shall be fixed as per fee schedule under the DIAC (Administrative Cost & Arbitrators' Fees) Rules, 2018.

13. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

14. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.

15. Petition is disposed of in the aforesaid terms.

16. Before drawing the curtains, Court appreciates the able assistance rendered by Ms. Shivani Chawla, Advocate in the matter.

JYOTI SINGH, J

OCTOBER 15, 2025/YA