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

+ **ARB.P. 404/2025**

MAHAVIR TRANSPORT

.....Petitioner

Through: Mr. Umesh Chandra Sharma, Mr.
Peeyush Kaushik, Mr. Vikas Sharma,
Mr. Ritesh Kumar Kaushik, Mr.
Siddharth Kaushik, Advocates

versus

CMD DELHI STATE CIVIL SUPPLIES CORPORATION

.....Respondent

Through: Mr. Gurpreet Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

12.03.2025

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1. The Petitioner has approached this Court under Section 11(6) & 11(8) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. Material on record indicates that the Petitioner was the successful bidder for the contract for transportation of specified food articles from the godown to Fair Price Shops in Delhi for and on behalf of the Respondent. It is stated that the said Contract was awarded to the Petitioner and the Agreement dated 06.02.2023 was entered into between the parties. It is stated that the disputes have arisen between the parties inasmuch as the contract period has not been extended by the Respondent despite the Petitioner's request as per the terms of the contract.



3. Clause 32 of the Agreement dated 06.02.2023 contains an Arbitration Clause, which reads as under:

“32. All the disputes and differences arising out of or in any way touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to the sole arbitration of, the Arbitrator to be appointed by Chairman-Cum-Managing Director or any officer/person appointed by the Chairman Cum Managing Director, Delhi State Civil Supplies Corporation Ltd. Delhi. In case the arbitrator to whom the matter is originally referred is transferred or vacates office or is unable to act for any reason whatsoever, the Chairman-Cum- Managing Director shall be competent to appoint another person as Arbitrator. The arbitrator appointed shall not have any direct or indirect, past or present relationship with or interest in any of the parties or counsel or the subject matter of the dispute which is likely to give rise to justifiable doubts as to his independence or impartiality. His appointment should not further be challengeable under section 12 Arbitration and Conciliation Act 1996 or his relationship should not fall under any category specified in schedule VII of the said Act. That the fee (if any) or expenses of the Arbitration proceeding will be borne by the parties equally.

The award of such arbitration shall be final and binding on the parties to this contract. The Courts of Delhi only will have the jurisdiction in the matter of arbitration”

4. It is stated that the notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 was issued by the Petitioner on 20.02.2025.



5. Learned Counsel for the Respondent appeared on advance notice. It is stated that he is not aware as to whether the said notice was actually received by the Department or not. It is further stated that even before the said notice was issued, the Petitioner has approached this Court for appointment of an Arbitrator. It is stated that the Respondent is in the process of taking steps for the purpose of appointment of an Arbitrator.

6. A copy of the notice, which has been handed over in Court, indicates that the said notice was received on 20.02.2025.

7. The Arbitration Clause, under which the Respondent is competent to appointment an Arbitrator, is no longer valid in accordance with the judgments passed by the Apex Court in Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited, (2020) 20 SCC 760 and Central Organisation for Railways Electrification (CORE) v. ECI SPIC SMO MCML (JV) A Joint Venture Company, 2024 SCC OnLine SC 3219.

8. In view of the above, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes which have arisen between the parties

9. Accordingly, Mr. Rakesh Kumar Dudeja, Advocate, (Mob. No.9810147798) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

11. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act within a week of entering on reference.



12. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

13. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

14. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 12, 2025

RJ