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

+ **ARB.P. 714/2025**

HIMALAYAN FLORA AND AROMAS PVT LTDPetitioner

Through: Mr. Anand Mishra, Ms. Vandita Nair,
Ms. Ayushi Rajkat, Mr. Devansh Pundir and Mr.
Pranjal Tandon, Advocates.

versus

MUNICIPAL CORPORATION OF DELHIRespondent

Through: Mr. Tushar Sannu, Standing Counsel
along with Ms. Ankita Bhadouriya, Mr. Fajallu
Rehman and Mr. Vishal, Advocates with Mr S.K.
Chaudhary, ASO for MCD.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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11.09.2025

1. This petition is filed by the Petitioner under Section 11(5) and (6) of Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. Case of the Petitioner, as set out in the petition is that Respondent floated a Tender Notice on 24.09.2019 for '*allotment of advertisement rights through designated clusters/individual unipole sites on Expressway NH-24/9*', on the terms and conditions mentioned therein. Being a successful bidder, Petitioner received an offer letter dated 20.11.2019 for display of advertisement through 4 unipoles for a period of three years, extendable by two terms of one year each.



3. It is averred that on receipt of the offer letter, Petitioner deposited a sum of Rs.22,89,600/- towards Advance Monthly Licence Fee (MLF) and security deposit. Final letter of allotment was issued on 16.12.2019 and Petitioner commenced the work of laying the foundation at the allotted site. However, objections were raised by NHAI and Petitioner made several representations to find a solution to the objections raised. Finally, after due deliberations and discussions, NHAI issued 'No Objection Certificate' and Petitioner made representations on 12.05.2022 and 24.06.2022 to the Respondent for issuance of Authority Letter for execution of the work. It is stated that contrary to the agreed terms, Respondent issued a letter dated 04.11.2022, arbitrarily and unilaterally modifying the terms of the tender document and reducing the period of contract from '3+1+1' years to *'for the remaining period only'* i.e., for about two years and that too on an escalated MLF @ 10%, which was supposed to kick in the 4th year after first three years of running of the contract. Petitioner alleges that it suffered huge financial losses due to the illegal actions of the Respondent and filed W.P.(C) No. 12188/2023 in this Court, wherein the parties were directed to explore the possibility of an amicable settlement.

4. It is further averred that while the Respondent was giving an impression that it was attempting to settle the matter, in the hearing of the writ petition on 22.11.2024 Court was informed by the Respondent that it had issued fresh Tender titled *'short tender notice'* dated 20.11.2024 inviting bids for advertisement rights, including for the cluster of unipoles allotted to the Petitioner and the writ petition was thus disposed of. Thereafter, Petitioner filed a petition under Section 9 of 1996 Act being O.M.P.(I) (COMM.) 413/2024 for restraining the Respondent from



dispossessing the Petitioner from the site until the conclusion of the arbitral proceedings. By order dated 06.12.2024, with the consent of the parties Court appointed a Sole Arbitrator to adjudicate the disputes and directed that the petition will be treated as an application under Section 17 of 1996 Act by the Arbitrator under Clause 14 of Part E of Delhi International Arbitration Centre (Arbitration Proceedings) Rules, 2023 ('DIAC Rules'), which provides for emergency arbitration. On an application filed by the Petitioner being I.A. No. 47802/2024 for modification of the order, vide order dated 09.12.2024 Court modified the order dated 06.12.2024 to the extent that DIAC will proceed under Rule 14, since it was the contention of the Petitioner that if the Arbitral Tribunal is constituted, then DIAC cannot initiate emergency proceedings.

5. It is stated that emergency arbitration proceedings were thereafter conducted and vide emergency award dated 11.12.2024 a *pro tem* arrangement was arrived between the parties, as per which Petitioner agreed to pay/match the amount to be paid by the highest bidder under Tender Notice dated 20.11.2024 for the cluster of the Petitioner and in turn, Petitioner was entitled to advertise at the subject cluster till such time the award dated 11.12.2024 was vacated, modified or varied by a duly constituted Arbitral Tribunal. Petitioner issued notice dated 20.03.2025 under Section 21 of 1996 Act for constitution of the Arbitral Tribunal and proposing the name of the Sole Arbitrator, however, Respondent challenged the emergency award in this Court under Section 34 of 1996 Act in O.M.P. (COMM.) No. 158/2025 and did not consent to the appointment of the Sole Arbitrator, whereafter Petitioner filed this petition.

6. Detailed reply has been filed on behalf of MCD. Relying heavily on



paragraphs 5 to 14 of the reply, Mr. Sannu, learned Standing Counsel for MCD submits that Respondent has already assailed the Emergency Award dated 11.12.2024 before this Court and its legality is yet to be tested. Having taken recourse to emergency arbitration leading to an Emergency Award, Petitioner cannot seek appointment of an Arbitrator for adjudication of same disputes as the doctrine of *res judicata* comes into play. It is further submitted that the Emergency Award dated 11.12.2024 was operative only for a period of 90 days as per Rule 14 of DIAC Rules and without prejudice to the argument that the claims are barred by *res judicata*, assuming that Petitioner could seek appointment of Arbitrator, steps in this direction ought to have been taken before expiry of 90 days from the date of the award. Petitioner took no steps for appointment within 90 days period and filed this petition only because Respondent challenged the Emergency Award in this Court. It is also urged that Petitioner is forum hunting inasmuch as earlier a writ petition was filed in this Court challenging letter dated 21.04.2025 issued by MCD, declining to extend the allotment for display of advertisements by two years and being unsuccessful, Petitioner is now taking recourse to the present petition.

7. Learned counsel for the Petitioner submits that there is no merit in the objections raised on behalf of MCD. It is submitted that the Emergency Arbitrator was appointed in a petition under Section 9 and with the consent of the parties, a *pro tem* arrangement was arrived at on 11.12.2024 in order to preserve the subject matter of the arbitration. This cannot come in the way of the Petitioner seeking appointment of an Arbitrator for adjudicating the substantive disputes between the parties. The plea of the MCD that the claims raised in the present petition for reference to arbitration are barred by



res judicata is wholly misconceived. No interim order passed by the Court for preserving the subject matter of litigation can come in the way of final adjudication of the disputes. In fact, in the *pro tem* order itself, the Emergency Arbitrator has clarified that the arrangement shall continue till such time the order is vacated, modified or varied by duly constituted Arbitral Tribunal. The petition under Section 34 filed by MCD can be no impediment in the appointment of an Arbitrator under Section 11 of 1996 Act, whatever be the outcome of the challenge to the Emergency Award. The plea that the Petitioner was required to invoke arbitration before the expiry of 90 days from the date of Emergency Award is equally fallacious as there is no such mandate in Rule 14 of DIAC Rules.

8. Heard learned counsels for the parties and examined their submissions.

9. As per the narrative of facts pleaded in the petition, disputes arose between the parties with regard to advertisement rights in relation to 4 unipoles under Cluster No. 07, which was allocated for three years extendable by two terms of one year each. On a petition filed by the Petitioner under Section 9 of 1996 Act, with the consent of the parties, Court appointed an Emergency Arbitrator and it was directed that the petition will be considered as an application under Section 17 and the proceedings will be treated as emergency arbitration. It is undisputed that with the consent of the parties, vide order dated 11.12.2024 a *pro tem* arrangement was arrived between them, as per which Petitioner agreed to pay the amounts payable by the highest bidder under Tender Notice dated 20.11.2024 for Petitioner's cluster and in turn, it could advertise. Clearly and unequivocally, it was mentioned in the order that the arrangement would continue till the same



was vacated, modified or varied by a duly constituted Arbitral Tribunal. Petitioner thereafter invoked the arbitration clause and sent a notice under Section 21 of 1996 Act for appointment of an Arbitrator, but there was no response and this petition was filed.

10. Broadly understood, MCD has raised two objections to the appointment of an Arbitrator. The first objection is that the claims sought to be referred to arbitration in this petition are barred by *res judicata*. First and foremost, in my *prima facie* view, an Emergency Award, whereby a *pro tem* arrangement was arrived between the parties with their consent, cannot be construed as an award finally deciding the disputes between the parties on merits and hence, the principles of *res judicata* are not attracted. As rightly flagged by Petitioner's counsel, it is mentioned in the Emergency Award itself that the interim arrangement would continue till the same was vacated, modified or varied by a duly constituted Arbitral Tribunal. Even otherwise, the Supreme Court has held in ***Indian Oil Corporation Limited v. SPS Engineering Limited, (2011) 3 SCC 507***, that it is for the Arbitral Tribunal to determine whether the claims referred for adjudication are barred by *res judicata*. Therefore, this objection is without merit and is rejected.

11. Coming to the objection that this petition cannot be entertained for appointment of an Arbitrator since Petitioner did not initiate the process before expiry of 90 days from 11.12.2024, when the Emergency Award was passed, in my view, the same also merits rejection. Rules 14.13 and 14.14 of DIAC Rules on which reliance is placed by MCD, on a plain reading do not suggest that there is any mandate that the party must take recourse to appointment of an Arbitrator before expiry of 90 days from the date the order was passed. Rules are extracted hereunder, for ready reference:-



“14.13. The order passed by the Emergency Arbitrator shall remain operative for a period of 90 (ninety) days from the date of passing of the order unless modified, substituted or vacated by the Arbitral Tribunal. The Arbitral Tribunal shall also have the power to extend the operation of the order beyond the period of 90 (ninety) days.

14.14 Any order of the Emergency Arbitrator may be confirmed, varied, discharged or revoked, in whole or in part, by order or award made by the Arbitral Tribunal upon application by any party or upon its own initiative.”

12. As can be seen, Rule 14.13 only provides that the order passed by the Emergency Arbitrator shall remain operative for 90 days from the date of passing of the order, unless modified, substituted or vacated by the Arbitral Tribunal. Rule 14.14 provides that any order of the Emergency Arbitrator may be confirmed, varied, discharged or revoked, in whole or in part, by order or award made by the Arbitral Tribunal. I am unable to read anything in the Rule, which even remotely suggests that a party must seek appointment of Arbitrator before expiry of 90 days. Instead to the contrary, the Rules envisage modification/vacation of the Emergency Award by the Arbitral Tribunal. This objection therefore merits rejection. This Court also disagrees with MCD that Petitioner is forum hunting. The writ petition was filed by the Petitioner for challenging the decision of MCD declining to extend the contract further and was disposed of once the Court was apprised that a fresh Tender Notice had been issued. Clearly, Petitioner had the right to take recourse to remedies under the contract and be it noted that even the writ Court while disposing of the writ petition had given liberty to the Petitioner to invoke appropriate remedies. Accordingly, the objections raised by MCD are rejected and this Court finds no impediment in appointing the Arbitrator.



13. Accordingly, Mr. Justice Ravi Shankar Jha, former Chief Justice of Punjab and Haryana High Court (Mobile No. 9425153362), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of DIAC. Fee of the Arbitrator shall be fixed as per fee schedule under DIAC (Administrative Cost & Arbitrators' Fees) Rules 2018.
14. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.
15. 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 parties are left open.
16. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

SEPTEMBER 11, 2025/RW