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

+ W.P.(C) 6427/2025 and CM APPL.29316/2025

M/S PIONEER MARKTRADE PVT. LTD

.....Petitioner

Through: Mr. N.P. Singh and Mr. Barun Dey,
Advocates.

versus

DELHI METRO RAIL CORPORATION LIMITED

.....Respondent

Through: Mr. Gyanendra Kumar, Adv. for R1.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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16.05.2025

1. The present petition has been filed by the petitioner being aggrieved by the alleged illegal invocation of the bank guarantee bearing no. 402LG1124/2015 submitted by the petitioner in connection with the lease agreement dated 19.09.2016 (hereinafter referred to as '*Lease Agreement*') entered into between the parties.

2. It is the case of the petitioner that the invocation of the bank guarantee by the respondent, *vide* their letter dated 24.04.2025 to the concerned bank, is in utter disregard of the contractual provision/s of the Lease Agreement, inasmuch as there was no outstanding amount payable by the petitioner towards the lease/license fees. Yet, in guise of recovery of certain outstanding amount towards some "interest component", the bank guarantee has been encashed by the respondent.

3. Learned counsel for the petitioner draws attention to the fact that on 03.02.2023, a settlement agreement has entered into between the parties, under Section 73 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "*A&C Act*") to settle certain disputes emanating from the Lease Agreement.



He submits that this settlement agreement crystallised the amount payable by the petitioner towards the arrears of lease/license fees after taking into account the moratorium period. It was also agreed by the parties that this settlement agreement would be read as a part and parcel of the Lease Agreement.

4. It is submitted that the petitioner has been diligently paying the lease/licence fee based on the demands made by the respondent. As such, there is no occasion for the respondent to encash the bank guarantee submitted by the petitioner.

5. Be that as it may, the learned counsel for the petitioner submits that since the bank guarantee has already been encashed, the respondent should now treat the amount realised by way of encashment of the bank guarantee as a security deposit under Clause 3.7.1 of the Lease Agreement, and accordingly, no fresh bank guarantee be sought from the petitioner.

6. Learned counsel for the respondent strongly refutes each and every contention made by the learned counsel for the petitioner. He submits that the bank guarantee has been rightly encashed, and the petitioner is liable to replace the same by way of a fresh bank guarantee.

7. After some hearing, respective counsel for the parties are in agreement that disputes between the parties are liable to be resolved by way of arbitration in terms of the arbitration clause contained in clause 12.2 of the Lease Agreement. Further, respective counsel jointly request this Court to appoint a sole arbitrator to adjudicate the disputes between the parties, in these proceedings itself.

8. Accordingly, at joint request, Ms. Justice (Retd.) Rekha Palli, Former Judge, Delhi High Court (Mobile No. 9810012120) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

9. Respective counsel for the parties have further agreed as under:-



- i. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosures as required under Section 12 of the A&C Act.
- ii. The learned Sole Arbitrator shall be entitled to a fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
- iii. The parties shall share the arbitrator's fee and arbitral costs, equally.
- iv. Both parties shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the learned Sole Arbitrator, in accordance with law.
- v. All rights and contentions of the parties in relation to the claims/counter-claims shall be kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.
- vi. The parties shall be at liberty to file application/s under the A&C Act including Section 16 and 17 thereof. The same shall be decided in accordance with law.
10. The present petition is accordingly disposed of in the above terms.
11. Learned counsel for the petitioner seeks some protective order/s till the matter is considered by the learned sole Arbitrator.
12. Considering the circumstances, the respondent is restrained from taking any precipitative steps against the petitioner till the date of the first sitting of the arbitral tribunal. Thereafter, it shall be for the learned Sole Arbitrator to consider whether any interim protection is warranted or not after hearing both the parties. It is made clear that this order shall not be construed as an expression of opinion of this Court as regards thereto.

SACHIN DATTA, J

MAY 16, 2025/at