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

+ **ARB.P. 939/2025**

M/S MAGNOLIA GLASS PRIVATE LIMITEDPetitioner

Through: Ms. Shagun Shahi Chugh; Ms. Kavya
Roy Choudhury; Mr. Kunal Gupta,
Advs.

versus

PERNOD RICARD INDIA PRIVATE LIMITEDRespondent

Through: Mr. Ankit Virmani Adv., Mr. Krishan
Tewary Adv., Ms. Malvika Arya
Adv., Mr. Sharad Sharma Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

09.10.2025

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1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking appointment of an Arbitrator.
2. The brief facts are that the parties entered into an Exclusive Sourcing Agreement for recycled glass bottles dated 22.11.2022, whereby the petitioner was engaged as an exclusive supplier of recycled bottles for the respondent.
3. The said Agreement contained arbitration clause being Clause No. 12 which reads as under:

"12 ARBITRATION:

a) Any dispute or difference arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof or, any dispute or



difference whatsoever in relation to this contract, shall be referred to arbitration to be carried out by a mutually appointed Sole Arbitrator in accordance with the Arbitration and Conciliation Act, 1996 ("Act") or any statutory modifications thereto, for the time being in force. In the event, Parties fail to appoint a Sole Arbitrator with mutual consent, the sole arbitrator shall be appointed in accordance with The Delhi International Arbitration Centre (DIAC) (Arbitration Proceedings) Rules, 2018 (DIAC Rules). The arbitration proceedings shall be conducted as per the procedure laid down under DIAC Rules.

b) The language of the Arbitral Proceedings shall be English. The venue and seat of Arbitration shall be Delhi and no Court other than the Courts in Delhi shall have Jurisdiction to adjudicate any question arising in the matter of conduct of the Arbitration, any decision of the Arbitrator, the interim or Final Award of the Arbitrator or any other issue or issues arising from the Arbitration proceedings. The arbitral award shall be final and binding on the parties

Both the parties have signed this Exclusive Bottle Sourcing agreement on this ___ day of the _____ of the month of 2022.”

4. Since there were disputes between the parties, the petitioner invoked arbitration *vide* legal notice dated 11.03.2025 and thereafter filed the present petition.

5. Mr. Virmani, learned counsel for the respondent states that the petition is premature and not maintainable as in the present case, the petitioner as per the terms of the Agreement should have first approached



DIAC making a request for appointment of an Arbitrator. In case of refusal from DIAC, the petitioner should have approached the Court. The relevant paragraphs of the reply are reproduced as under:

- “4. It is settled law that the present Petition is not maintainable as,*
- a. the parties have agreed to a specific procedure for appointment of an arbitrator; and*
 - b. the Petitioner has not followed the said procedure.*
- 5. The parties have, under Clause 12 of the Exclusive Sourcing Agreement dated 22.11.2022 executed inter-se the parties ("Contract"), agreed specifically to "a procedure for appointing the arbitrator" in case of a dispute arising out of the said Contract [Section 11 (2) of the Act]. Clause 12 of the said Contract is reproduced hereunder for ease of reference:*
- a) Any dispute or difference arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof or, any dispute or difference whatsoever in relation to this contract, shall be referred to arbitration to be carried out by a mutually appointed Sole Arbitrator in accordance with the Arbitration and Conciliation Act, 1996 (Act) or any statutory modifications thereto, for the time being in force. In the event, Parties fail to appoint a Sole Arbitrator with mutual consent, the sole arbitrator shall be appointed in accordance with The Delhi International Arbitration Centre (DIAC) (Arbitration Proceedings) Rules, 2018 ('DIAC Rules')'. The arbitration proceedings shall be conducted as per the procedure laid*



down under DIAC Rules.

b) The language of the Arbitral Proceedings shall be English. The venue and seat of Arbitration shall be Delhi and no Court other than the Courts in Delhi shall have jurisdiction to adjudicate any question arising in the matter of conduct of the Arbitration, any decision of the Arbitrator, the Interim or Final Award of the Arbitrator or any other issue or issues arising from the Arbitration proceedings. The arbitral award shall be final and binding on the parties.

6. In view of the above, the Clause 12 of the said Contract ("Arbitration Clause") provides the following specific procedure for referring the parties to arbitration in case of any dispute inter-se the parties qua the said Contract:

- a. the parties would mutually appoint a sole arbitrator; and*
- b. in case the parties fail to appoint a sole arbitrator with mutual consent, the sole arbitrator shall be appointed in accordance with the Delhi International Arbitration Centre (DIAC) (Arbitration Proceedings) Rules, 2018 ("DIAC Rules 2018").*

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8. It is submitted that the parties have not been able to appoint a sole arbitrator by mutual consent. In the circumstances, the agreed procedure for appointment entails appointment of a sole arbitrator under the DIAC Rules 2018."

6. Mr. Virmani, learned counsel, further relies on the judgment of the *Standard Corrosion Controls Pvt. Ltd. v. Sarku Engineering Services SDN*



BHD (2009) 1 SCC 303 and more particularly on paragraph 14 which reads as under:

“14. As already stated above, the parties had agreed that any dispute between them shall be settled as far as possible by mutual consultation and consent, failing which by arbitration to be held at Mumbai applying the Arbitration Rules of the ICC. In my opinion, the applicant has to apply to the Secretariat of the ICC, as mentioned in the Arbitration Rules of the ICC, and it cannot approach this Court for appointment of an arbitrator. No doubt, the arbitration will have to be held at Mumbai, but the entire procedure of appointment of the arbitrator has to be in accordance with the Arbitration Rules of the ICC, which requires that first a request has to be made to the Secretariat of the ICC. Admittedly, the applicant has not approached the ICC Secretariat. Hence, in my opinion, the application filed by the applicant herein, is not maintainable at all. This Court in a series of decisions has held that such an application/petition without approaching the authority nominated and agreed upon by the parties is not maintainable vide Iron & Steel Co. Ltd. v. Tiwari Road Lines, Rite Approach Group Ltd. v. Rosoboronexport, etc.”

7. In **Standard Corrosion Controls Private Limited (supra)** the Arbitration clause contains a negative mandate. The same has been reproduced as under:

“Article X: Arbitration Any dispute or difference in view regarding this CONTRACT shall be settled, in so far as is possible, by mutual consultation and consent, failing which by arbitration to be held at



Mumbai, India applying the Arbitration Rules of the International Chamber of Commerce by a single arbitrator.”

8. While interpreting the same in the light of the facts of the case, Hon'ble Supreme Court held that it was imperative for the parties to approach the ICC seeking resolution of dispute through mediation. In the instant case, Clause No. 12 of the Agreement is not in *pari materia* with the clause in the aforesaid decision. It does not include any negative mandate. Therefore, the decision in ***Standard Corrosion Controls Private Limited (supra)*** does not apply to the facts of the case.

9. Moreover, the Arbitration Clause i.e, Clause No. 12 of the Agreement, in the present case states that in case the parties are unable to appoint the Sole Arbitrator then the Arbitrator shall be appointed in accordance with the DIAC rules. The DIAC rules are primarily procedural in nature and cannot interfere with the jurisdiction of a referral court in referring the disputes to arbitration.

10. Even if this Court appoints an Arbitrator, the same will be done by invoking the rules under DIAC. Therefore, the contention of the respondent that the petitioner should have approached DIAC first is rejected.

11. The fact of the matter is that there is an arbitration clause and the parties have been unable to arrive at a mutually acceptable Arbitrator.

12. For the said reasons, the petition is allowed and disposed of with the following directions:

- i) Mr. Percival Sam Billimoria (Senior Advocate) (Mob. No. 9810747468) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis and rules of the Delhi



International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').

- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.
- vi) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

OCTOBER 9, 2025/DM