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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1243/2025**
INDIAN COUNCIL OF MEDICAL RESEARCH & ANR.

.....Petitioners

Through: Mr. Jasbir Bidhuri, Mr. Arun Sanwal,
Advocates

versus

M/S GCC BIOTECH INDIA PRIVATE LIMITED.....Respondent

Through: Mr. Suryakant Singla Sr. Adv. with
Mr Ashok Chhaparia Advocate, Mr. Shanto
Mukherjee Advocate

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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23.09.2025

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. The brief facts are that during the COVID-19 Pandemic, Tender No. GEM/2020/B/75347 dated 24.08.2020 was floated by petitioner No. 2 for and on behalf of the petitioner No. 1 for procurement of RT-PCR kits. The respondent participated and was declared as successful bidder for supplying of 9.5 lakhs RT-PCR kits and was issued a Letter of Intent (**“LoI”**) dated 17.11.2020.
3. The general terms and conditions of the said tender contains an arbitration clause being Clause No. 16 which reads as under:

“16. Dispute Resolution Between Buyer and Seller:

AMICABLE SETTLEMENT:

In the event of any question, dispute or difference arising



connection with the Contract, the Parties shall use their respective reasonable endeavour to settle any dispute amicably. If a Dispute is not resolved within 30 days after written notice of any dispute by one Party to the other, the same shall be resolved through the mechanism of a co-ordination committee to be formed by the Buyer and Seller/Service Provider and to be chaired by the Primary User of Buyer Organization/Department along with representatives from Buyer Department and Seller.

ARBITRATION: In the event of any question, dispute or difference arising under the terms and conditions of the contract placed through GeM, the same shall be referred to the sole arbitration by an officer nominated as Arbitrator by the Primary Buyer of the concerned Buyer Organization. It will be no objection that the arbitrator is a Government Servant and that he had to deal with the matters to which the contract relates or that in the course of his duties as a Government servant he has expressed views on all or any of the matters in dispute or difference. The award of the arbitrator shall be final and binding on the parties to the contract. The arbitration shall be governed as per Indian Arbitration and Conciliation Act 1996 as amended up to date. The place for arbitration shall be at the place from where contract has been placed by the Buyer or at the place of Primary Buyer as decided by the Primary Buyer.



In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the Primary Buyer to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

In respect of all contract placed through GeM, the dispute would not be referred or entertained by Micro and Small Enterprise Facilitation Council, Consumer Forum or any other adjudication forum.

All disputes in connection with the Contract, shall be subject to the exclusive jurisdiction of the Court within the local limits of whose jurisdiction, the place from where Contract was issued is situated GeM SPV would not be a party to any such dispute/matter.

In case any Seller / Service provider makes GeM a party / respondent in any case involving any dispute between Buyer and Seller arising out of a concluded contract or arising out of bidding process initiated / concluded by the Buyer on GeM, it would be obligatory on the part of the Buyer to represent GeM also through their Counsel / Lawyer in the proceedings before the legal authority and ensure timely filing of replies / affidavits etc provided by GeM also through their Counsel / Lawyer before the concerned legal authority during the course of litigation. A standard reply on behalf of GeM, covering following aspects shall be incorporated in all replies / affidavits filed by the Buyer in such cases:



“Government e-Marketplace is a National Public Procurement Portal; an end-to-end online Marketplace for Central and State Government Ministries / Departments, Central & State Public Sector Undertakings (CPSUs & SPSUs), Autonomous institutions and Local bodies, for procurement of common use goods & services. Prima facie, the dispute in the present case appears to be between the Buyer and Seller arising out of a contract placed / bid created by the Buyer on Government e-Marketplace. As per Clause 16, Clause 17 and Clause 22 of the General Terms and Conditions of Government e-Marketplace (duly accepted by the Buyer and Seller), GeM is not to be made a party to any dispute between the Buyer and the Seller. As such Government e-Marketplace is liable to be deleted from the array of parties. In light of the above, we request your goodself to kindly delete Government e- Marketplace from the array of parties.”

4. Further, Corrigendum to the said tender also contains Arbitration Clause being Clause Nos. 23 and 24.

“23: Settlement of Disputes: *If any dispute or difference of any kind whatsoever shall arise between the procurement agency and the supplier in connection with arising out of the contract, the party shall make every effort to resolve amicably, such dispute or difference by mutual consultation.*

24: Settlement of Disputes: *if, after thirty (30) days, the parties have failed to resolve their dispute or difference by*



such mutual consultation, then either the procurement agency or the supplier may give notice to the other party of its intention to commence arbitration, as hearing after provided, as to the matter and dispute, and no arbitration in respect of this matter may be commenced unless such notice is given, (a) any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the goods under the contract. In the case of a dispute or difference arising between the purchaser/consigning and a domestic supplier relating to any matter arising out of or connected with the contract, such dispute or difference shall be referred to the sole arbitrator, appointed by Director General ICMR.”

5. Since there were disputes, the petitioner No. 1 invoked arbitration vide Legal Notice dated 23.01.2025 and thereafter, filed the present petition.
6. Mr. Singhla, learned senior counsel for the respondent, states that there is a process of amicable settlement and the parties were required to endeavour to settle the disputes amicably and thereafter co-ordination committee and only in case both were unsuccessful the parties were to be referred to arbitration.
7. Mr. Bidhuri, learned counsel for the petitioners, states that the petitioner No. 1 had tried numerous times to settle the matter but the settlement has failed and the petitioner No. 1 is no longer interested in settling



the matter and would have the same resolved through arbitral mechanism.

8. Mr. Singhla, learned senior counsel disputes the same.

9. I have heard learned counsel for the parties.

10. In the present case, admittedly, there is an amicable settlement clause which contemplates parties endeavouring to settle the disputes amicably but once the petitioners come to the Court and state that the petitioners do not see any fruitful purpose in trying to settle the matter amicably, I am of the view that relegating the parties to the amicable settlement clause would be an exercise in futility.

11. Additionally, the said clause also contemplates that it shall be the “endeavour” of the parties to settle the disputes. The same at best can only be considered directory and not mandatory.

12. Even the petitioner No. 1 has sent numerous letters to the respondent claiming the amount and the respondent has chosen not to reply to any of those letters or asking the petitioner No. 1 to endeavour to settle the disputes amicably.

13. Hence, I am satisfied that there is no possibility of an amicable settlement. There is a valid arbitration clause and there are disputes which need to be settled through the arbitral mechanism.

14. For the said reasons, the petition is allowed and the following directions are issued:-

- i) Mr. Vaibhav Gaggar (Senior Advocate) (Mob. No. 9958808548) 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 1996 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.
15. The petition is disposed of with the aforesaid directions.

SEPTEMBER 23, 2025/AS

JASMEET SINGH, J