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

+ **ARB.P. 1721/2024**

M/S SARR FREIGHTS CORPORATIONPetitioner

Through: Mr. Divyam Agarwal, Advocate

versus

BORDER SECURITY FORCERespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

19.03.2025

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1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen under a Contract dated 01.02.2023 entered into between the Petitioner and the Respondent.

2. The facts as stated in the petition reveals that Petitioner and Respondent entered into a Contract dated 01.02.2023 on the Government e-Marketplace (GeM) for the purpose of transportation of containers of Congo Contingent from 25 EN BSF, Chhawla, New Delhi to Beni, DR Congo. It is stated that the cargo has been satisfactorily delivered by the Petitioner at Congo. It is stated that the Petitioner raised an invoice for a sum of Rs.65,44,780/-, however, the said amount has not been paid to the Petitioner. Clause 16.2 of the general terms and conditions of GeM 4.0 (Version 1.5) contains an arbitration clause which reads as under:



“16.2 Arbitration:

In the event of any conflict / dispute arising out of or in connection with the Contract placed through GeM, which has not been resolved in accordance with the procedure laid down in Clause 16.1 above, the aggrieved Party may invoke Arbitration by sending a written notice to the other Party. The procedure for appointment of the Arbitral Tribunal shall be as follows.

i. In cases where the total value of the Contract is less than INR 1,00, 00,000/- (Indian Rupees One Crore only) the same shall be referred to a sole arbitrator mutually appointed by both the Parties.

ii. Where the total value of the Contract exceeds INR 1,00,00,000/- (Indian Rupees One Crore only), the arbitration shall be conducted by a quorum of three arbitrators. Each party shall be entitled to appoint an arbitrator and the two party-appointed arbitrators shall within 30 (thirty) days from their nomination, appoint a third arbitrator i.e., the Presiding Arbitrator.

iii. In case of failure to appoint the Presiding Arbitrator within a period of 30 (thirty) days from the date of nomination of the two arbitrators by the respective parties, the aggrieved party shall approach the High Court (under whose jurisdiction the principal place of business of the Buyer department/organization is located) to appoint the Presiding Arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996 (as amended up to date).

iv. The arbitration shall be conducted in the English language. Arbitration proceedings can also be conducted online, as per the discretion of the Arbitral Tribunal.



v. The cost of the Arbitration shall be equally borne by both the Parties.

vi. The award of the arbitrator shall be final and binding on the Parties to the Contract. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996, as amended up to date. The seat of arbitration shall be at the place where the principal place of business of the Buyer department / organization is located.

vii. The Contract shall be interpreted and governed in all respects in accordance with the laws of India. All disputes in connection with or arising out of the Contract, shall be subject to the exclusive jurisdiction of the Court within the local limits of whose jurisdiction principal place of business of the Buyer department / organization is located.”

3. Clause 17 of the general terms and conditions of GeM 4.0 (Version 1.5) which prescribes the laws governing the Contract indicates that courts of the place from where the Contract has been made shall alone have the jurisdiction to decide any dispute arising out of or in respect of the Contract. It is stated that the Contract has been entered into between the parties in Delhi and the Respondent is also located in Delhi and, therefore, this Court has the jurisdiction to entertain the present petition.

4. It is stated that a notice under Section 21 of the Arbitration and Conciliation Act, 1996 invoking arbitration was issued to the Respondent on 31.08.2024.

5. Notice was issued in the petition on 29.10.2024. Affidavit of service has been filed. The Respondent has been served through speed post, courier



and e-mail. Service is complete. Despite service, there is no appearance on behalf of the Respondent today.

6. The Petitioner has been able to substantiate the case of existence of an arbitration clause. Accordingly, Mr. Vipin Nair, Adv., (Mob. No. 9891061111) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

7. 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.

8. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

9. 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.

10. 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.

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

SUBRAMONIUM PRASAD, J

MARCH 19, 2025

S. Zakir