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

+ **ARB.P. 1648/2025**

M/S DERPA INDUSTRIAL POLYMERS (P) LTDPetitioner

Through: *Appearance not given.*

versus

UNION OF INDIA THROUGH DY CMM GRespondent

Through: **Mr. Syed Abdul Haseeb, CGSC and
Mr. Ranbir Zaki, Adv with Mr.
Vikramjeet Singh, Asst. Material
Manager, Northern Railways.**

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

22.12.2025

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1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [**A&C Act**] by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes between the parties.

2. The facts as narrated in the petition indicate that on 08.02.2022, the Union of India/Respondent through GeM portal placed a supply order in favour of the Petitioner for supply of safety shoes for Northern Railway. It is stated that disputes have arisen between the parties under the said transaction. A notice under Section 80 of CPC was issued by the Petitioner to the Respondent on 25.10.2023. The said notice dated 25.10.2023 reads as under:



BSM/Derpa/NRIy/I

Dated: 25th October 2023

1. The General Manager
Northern Railway
Baroda House
New Delhi 110001
2. Principal Chief Materials Manager
N Rly, Baroda House
New Delhi 110001

Legal Notice u/s 80 CPC

Re: GeM contract no. GEMC-511687775129935 dated 8.2.2022 and Your PO No 10200071201153 dated 24.2.2022 placed on M/s Derpa Industrial Polymers (P) Ltd Ghaziabad

Dear Sir,

Under instructions from my client M/s Derpa Industrial Polymers (P) Ltd having their registered office at 56 Industrial Estate, Loni, Ghaziabad I have to bring to your notice:

1. That my client is a registered MSME unit and thus is covered under the provisions of MSME Act 2006
2. That GeM, the Government procuring agency, placed a contract no. GEMC-511687775129935 dated 8th February 2022 on my client for procuring 8411 pairs of Safety Footwear indented by Northern Railway.
3. That the aforesaid shoes were required to be supplied as per specifications indicated in contract. As per the specifications the shoes were required to be supplied in black color with full grain upper leather.
4. That in terms of clause 2.2 of the contract the supplier was required to get the advance samples approved from buyer before bulk manufacture. 15 nos of samples were to be submitted within 10 days of award of contract. Buyer shall within contract specification framework either approve the advance sample or will provide complete list of modifications required in the sample within 10 days. It was also laid down that in case there was a delay in approval of advance sample from buyer side the delivery period shall be refixed without L.D., Method



for approval of advance samples was specified as field trials by consignees for one month

5. That the GeM contract was confirmed by you- addressee no 2 –vide Purchase Order no 10200071201153 dated 24th February 2022. In the said Purchase Order under clause 3, the delivery period was indicated as starting from 8th February and completion by 9.4.2022. This was clearly in contravention of delivery period mentioned in contract , since the DP was required to be refixed after approval of advance sample. Thus there was an apparent error in mentioning fixed delivery date in the contract. It should have been specified as six months after approval of advance samples
6. That in terms of contract my client submitted 15 pairs of advance samples on 8th March 2022 to Respondent no 2 for approval. One pair each was sent to three employees for field trials. Two personnel approved the quality of shoes while the third one gave a tepid response . According to him the shoe quality was below average, not comfortable , ankle collar polish wore out within 20 days and thus quality is poor.
7. That acting on aforesaid singular comment the advance samples were rejected in 22nd June 2022 and my client was directed to submit another 14 pairs as advance sample. This action was illegal was arbitrary based on single individual's perception. The sample should have been accepted even following law of averages since two person out of three had given good response. After receiving the rejection advice my client had deputed their technical team to examine the rejected shoe and found that only problem was with polish. A detailed representation was sent by them on 21st July 2022. However, this just explanation was not accepted and they were directed vide departments letter dated 16th August 2022 to submit fresh 14 pairs as advance samples
8. That left with no other choice and being at a lower pedestal my client submitted fresh samples on 23rd August 2022.
9. That the advance samples which were re- submitted on 23rd August 2022 were accepted and approved on 4th October 2022.
10. That, thereafter the Purchaser vide their Modification Advice dated 20th October 2022 informed that DP upto 6th October 2022 has been extended with LD and DC and further DP has been refixed from 7.10.22 to 5.12.2022. This action was arbitrary, illegal and erroneous as brought out in following paras
11. That my client thereafter completed supplies and dispatched the entire quantity as per table given below:

Consignee	Quantity on order	Quantity supplied	Date of delivery
Tughlakabad	2317 pairs	2040 pairs	21.11.2022
		277 pairs	2.12.2022
Lucknow	4230 pairs	2260 pairs	25.11.2022



		1970 pairs	8.12.2022
Ludhiana	1864 pairs	1864 pairs	2.12.2022

12. That in between the Lucknow consignee reported short receipt of 100 pairs . My client counterchecked and it was discovered that due to negligence of transporter these shoes (packed in 5 cartons) were left behind. My client immediately arranged to get it dispatched which were not accepted and rejected by the consignee on 17.3.2023 since same were received after expiry of delivery period
13. That DP for this small quantity was finally extended till 30th March 2023 by Purchaser on 20th March 2023 and thus the entire supplies were completed by my client.
14. That, thereafter, Purchaser vide "Performance sum Extension Letter" dated 21st October 2022 "REFIXED" the delivery period of the contract as under:

Item no	Consignee	Quantity	Original DP	Refixed DP
1	Vikas	2317 pairs	09 April-2022	05-Dec-2022
2	Yash Karan	1864 pairs	09 April-2022	05-Dec-2022
3	Rajendra Pal Singh	4230 pairs	09 April-2022	05-Dec-2022

15. That the Purchaser had illegally and arbitrarily deducted as total amount of Rs 4,04,528.60 as alleged L/D against supplies completed by my client as per chart given below:

S No	Consignee	Qty	Bill No	Bill date	Bill amount	Amount Recd	LD deducted
1	LDH	1864	278	2.12.22	1004074	832840	89650
2	DELHI	2040	265	21.11.22	1098880	911476	98114
3	DELHI	277	279	2.12.22	149211	123764	13322
4	LKO	2260	272	25.11.22	1217386	1009773	108695
5	LKO	1970	290	8.12.22	1061173	839988	94747.60
TOTAL		8411			4530724	3717841	404528.60

16. That the action of the Purchaser is deducting L/D from the bills of my client submitted against supplies successfully completed in the instant case are illegal and arbitrary and against contractual and legal provisions due to following amongst other reasons:
- (a) Because there was no provision in the contract authorizing the Purchaser to ask for fresh advance sample after the earlier samples were rejected by just one of the three user on flimsy and personal perception grounds. As per clause 2.2 of the supply order since it was very minor defect the Purchaser was required to inform the supplier of modifications required and to ensure supplies as per samples approved by other two users
- (b) Because the Purchaser being in a dominant position and at a higher pedestal they instructed my client to offer fresh advance samples which they were forced to comply as they had no other choice. Hon'ble Delhi High Court in



BSNL vs BWL (MANU/DE/2035.2011) has touched upon this situation and ruled in favor of contractor.

- (c) Because in terms of the contract my client submitted advance samples within the given time frame which were accepted and sent for approval. The initial samples were arbitrarily rejected after which my client submitted fresh samples on 23rd August 2022. These samples were accepted by the Purchaser without extending the period for submitting advance samples. Thus, the Purchaser has accepted the performance of the contract at time other than that agreed upon. Therefore in terms of Section 55, para 3 of The Indian Contract Act 1872 the Purchaser cannot claim compensation for any loss occasioned by nonperformance of contract. Therefore the Purchaser's action on 20.10.22 in extending DP upto 6.10.22 with L/D is illegal and against legal provisions. The Purchaser was bound to refix the delivery period after the advance samples were approved on 6.10.22 by six months w.e.f. 6.10.22. That is the DP ought to have been refixed without L/D till 5.12.2022.
- (d) Because the Purchaser in their Performance sum extension letter dated 21st October 2022 reproduced in preceding paras have correctly refixed the delivery period till 5.12.2022 which super cedes all previous amendments issued earlier
- (e) Because even legally the Purchaser is not entitled to levy any L/D in the matter unless and until they are able to show and prove that any financial losses were incurred by them due to alleged delay in supplies on the part of my client. Legal position on this aspect is very clear in various judgments of different courts pronounced from time to time. Some of these judgments are cited below:

- (i) Vishal Engineers vs Indian Oil (ArbLR 253 DEL)
- (ii) MTNL vs Finolex Cables (MANU/DE/2929/2017)
- (iii) MTBL v BWL (MANU/DE/2035/2011)

In view of clear and contractual provisions as enumerated in preceding paras I hereby call upon you to immediately but within a period of 60 days from the date of receipt of this notice, release the amount of L/D which has been illegally deducted from the bills of my client with 18% compound interest, as per provisions of MSME Act 2006, from the date same were deducted till it is released.

In case you fail to comply with the aforesaid advice it shall be presumed that disputes have arisen in the contract and in that event the matter should be referred to arbitration through an independent arbitrator with sound legal background and who is not connected to Railway organization

Copy retained for future reference


B.S. Mathur
Advocate

Copy to:
M/s Derpa Industrial Polymers (P) Ltd



3. Since no response was received from the Respondent, the Petitioner has approached this Court under Section 11 of the A&C Act.
4. In the opinion of this Court, the aforesaid notice dated 25.10.2023 will not amount to a notice issued under Section 21 of the A&C Act invoking arbitration calling upon the Respondent to proceed ahead under the A&C Act. The Apex Court in Adavya Projects (P) Ltd. v. Vishal Structurals (P) Ltd., (2025) 9 SCC 686, has held that issuing a notice under Section 21 of the A&C Act is *sine qua non* for initiation of proceedings under the A&C Act.
5. The present petition is being disposed of with a liberty to the Petitioner to first issue a notice under Section 21 of the A&C Act to the Respondent and then approach this Court under Section 11 of the A&C Act seeking appointment of an Arbitrator.
6. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

DECEMBER 22, 2025

S. Zakir