



\$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1760/2024**
SUREKA INTERNATIONAL THROUGH ITS PARTNER ASHOK KUMAR SUREKAPetitioner

Through: Mr. B.S.Mathur, Adv.

versus

UNION OF INDIA THROUGH DIRECTOR GENERAL CISF, NEW DELHI & ANR.Respondent

Through: Mr. Akshay Amritanshu, CGSC with Ms. Drishti Saraf, Adv. with Mr. Raj Kumar, AC/CISF with Mr. P. Devenda, SI/CISF and Mr. Anit Kumar, SI/CISF

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

26.03.2025

%

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“*the Act*”) seeking appointment of an arbitrator to adjudicate the disputes between the parties, arising out of GeM Contract No. GEMC-511687728474366 dated 27.01.2023 (“*the Contract*”).
2. The brief facts of the case are that the petitioner is a registered Micro, Small and Medium Enterprises (“*MSME*”) unit under the MSME Act, 2006. The Government e-Marketplace (“*GeM*”) is a national procurement portal managed by GeM SPY, a non-profit company.
3. GeM issued a bid document for procuring 33,940 units of Synthetic Web Equipment and bids opened on 18.10.2022. The petitioner was awarded a supply order *vide* the Contract dated 27.01.2023, requiring delivery by 27.05.2023. The petitioner needed to get advance samples



approved before starting supplies, which was communicated on 15.06.2023.

4. GeM issued a notice extending the delivery date with liquidated damages. CISF Hyderabad issued additional letters extending the delivery period, acknowledging the contractual delivery period.
5. Thereafter, the respondent deducted Rs. 20,21,511/- as liquidated damages from the petitioner's bills.
6. The petitioner sent a legal notice dated 22.07.2024, requesting a refund or referring the disputes to arbitration in terms of Clause 16 of General Terms of Contract ("GCC") by appointing an independent arbitrator with legal background
7. The respondent rejected the request *vide* the reply dated 08.10.2024 and hence, the present petition.
8. Mr. Mathur, learned counsel appearing on behalf of the petitioner, states that in terms of conditions of the Contract, this Hon'ble Court at Delhi has the jurisdiction to entertain the present petition.
9. Mr. Amritanshu, learned CGSC appearing on behalf of the respondent, states that the present petition is liable to be dismissed as not maintainable and without jurisdiction as no cause of action or dispute has arisen between the parties within the territorial jurisdiction of this Hon'ble Court as per the terms and conditions of the Contract.
10. I have heard learned counsel for the parties and perused the material on record.
11. Clause 2.2 of the terms and conditions of the Contract provides that the Contract is in accordance with the General Terms and Conditions ("GTC"), which reads as under:



“2.2 This contract between the Seller and the Buyer, is for the supply of the Goods and/or Services, detailed in the schedule above, in accordance with the General Terms and conditions (GTC) unless otherwise superseded by Goods/Services specific Special Terms and Conditions (STC) and/or BID/Reverse Auction Additional Terms and Conditions (ATC), as applicable.”

12. The GTC on GeM 3.0 (Version 1.13) includes Clause 16 as arbitration clause, 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.

... ..”

13. The GTC on GeM 3.0 (Version 1.13) defines “buyer” as under:

“f. "BUYER" is the Contract placing authority, which includes Central/State Government Ministries/Departments including its attached/subordinate offices, Central/State Public Sector Units (PSUs) and Autonomous Bodies acting through its authorized officer(s) for and on behalf of President of India/Governor of the State /PSU/Autonomous Bodies, as the case may be, for purchase of Goods/Services offered by Sellers on GeM.”



14. On conjoined reading of the arbitration clause and the definition of buyer as per the GTC, I am of the view that the place of arbitration is the place where the contract has been placed by the buyer or at the place of primary buyer as decided by the primary buyer.
15. In the present case, the primary buyer is the National Industrial Security Academy, Hyderabad (“NISA”).
16. It is evident from the Contract that NISA, Hyderabad had placed the contract as the buyer and NISA, Hyderabad was authorised to give financial approval and was also the paying authority.
17. Additionally, the place of the primary buyer is Hyderabad.
18. For the said reasons, I am of the view that this Court will not have the territorial jurisdiction to entertain and try the present petition.
19. Hence, the petition is dismissed for want of territorial jurisdiction, granting the liberty to the petitioner to approach a competent court of law.
20. The petition is disposed of accordingly.

JASMEET SINGH, J

MARCH 26, 2025/sp

(Corrected and released on 03.04.2025)

Click here to check corrigendum, if any