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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1793/2025**
UNION OF INDIA

.....Petitioner

Through: Ms. Arunima Dwivedi, CGSC

versus

M/S FOOD KING IMPEX PVT LTD

.....Respondent

Through: Mr Peeyoosh Kalra, Mr Yashwant
Singh Baghel, Ms Meghna Nair, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
18.12.2025

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I.A. 26690/2025

1. This is an application Section 151 CPC, 1908 on behalf of the petitioner seeking condonation of delay in re-filing the main petition.
2. For the reasons stated in the application, issue notice.
3. Mr. Kalra, learned counsel accepts notice on behalf of the respondent and has no objection to the application being allowed.
4. For the said reasons, the application is allowed and the delay of 43 days in refiling the present petition is condoned.



5. The application is disposed of in aforesaid terms.

ARB.P. 1793/2025

6. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.
7. The brief facts are that the respondent being the successful bidder was awarded a tender *vide* letter of Acceptance dated 28.02.2023 for supply of 6 metric tonnes of dehydrated peas. The supplies made by the petitioner were rejected by the competent authority.
8. The tender conditions contains an arbitration clause being Clause No. 14 which reads as under:-

*“14. **Arbitration.** All disputes of differences arising out of or in connection with the Contract shall be settled in consonance with the provisions of Arbitration & Conciliation Act 1996 read in conjunction with Amendment Act 2015 and any other statutory law, as promulgated from time to time, in a manner outlined at Part-III and other terms and conditions of this RFP. Jurisdiction of Arbitration will be at Delhi (Contract Conclusion place). All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration is as per Forms DPM-7, DPM-8 and DPM-9 (Available on MoD*



website and can be provided on request).”

9. Mr. Kalra, learned counsel for the respondent, has not filed a reply but states that there is no Section 21 notice invoking arbitration.
10. However, I am unable to agree with the said submission.
11. Letter dated 28.08.2024 for termination of the said Contract reads as under:-



62603/12/2022-23/Veg Dhd/APO

Dated : 28 Aug 2024

To

M/s Food King Impex Pvt Ltd, G - 57,
Lawrence Road Delhi - 110035
(Email Id : foodkingimpex@gmail.com)

SUBJECT :- TERMINATION OF CONTRACT FOR UNSUPPLIED QTY OF 5.394 MT OUT OF 06 MT PEAS DEHYDRATED WITH RESPECT TO AT NO. 62603/12/2022-23/VEG DHD/APO DATED 28 FEB 2023 AWARDED TO M/S FOOD KING IMPEX PVT LTD. FOR FINANCIAL YEAR 2022-23.

Sir,

1. It is intimated that AT No 62603/12/2022-23/Veg Dhd/APO dated 28 Feb 2023 was placed on your firm to supply 06 MT Peas Dehydrated within Delivery Period from 02 Mar 2023 to 15 Apr 2023 and 1st Delivery Period Extension from 25 Apr 2023 to 09 Jun 2023. Your firm has supplied 5.750 MT Peas Dehydrated against the contracted quantity 06 MT which was later on declared Failed to Perform Within Warranty (FTPWW). Acropos, you have failed to perform your contractual obligation by non supply of 5.394 MT out of contracted qty of 06 MT Peas Dehydrated, as per DFS, within the Original Delivery Period as well as in first Delivery Period Extension i.e. from 25 Apr 2023 to 09 Jun 2023. Hence, there is a breach of contract on your part, in accordance with Para 3 of Part-II of the RFP.

2. As the time for making the deliveries was to be essence of the contract to which you have failed to adhere to, the above cited contract is hereby terminated in accordance with Para 18 (a) of Part-IV(A) of the RFP with forfeiture of PBG in full in accordance with Para 1.7 of Part-IV(A) of the RFP by taking 10 Jun 2023 as Date of Breach, in exercise of the right under the terms of contract governing the supply of Vegetable Dehydrated.

3. The Performance Bank Guarantee in the form of Fixed Deposit Receipt (FDR) No. 1153/BGQ/2023/000003 dated 13.03.2023 for Rs 82,260/- (Rupees Eighty Two Thousand Two Hundred Sixty Only) valid upto 01 Mar 2025 furnished by you towards the said contract is also hereby forfeited as per the terms and conditions of the RFP.

4. In addition to the above your firm is required to deposit the claim amount against the FTPWW qty 5.394 MT Peas Dehydrated amounting to Rs 25,19,496/- (Rupees Twenty Five Lakh Nineteen Thousand Four Hundred Ninety Six Only). However, as your Performance Bank Guarantee is Rs. 82,260/- (Rupees Eighty Two Thousand Two Hundred Sixty Only) held with this office, your firm is required to deposit balance amount of Rs 24,37,236/- (Rupees Twenty Four Lakh Thirty Seven Thousand Thirty Six Only) against FTPWW quantity (Less PBG amount).

5. Hence, as per terms and conditions of contract, you are requested to submit DD for the claim amount of Rs 24,37,236/- (Rupees Twenty Four Lakh Thirty Seven Thousand Thirty Six Only) for FTPWW qty i.e. 5.394 MT at the earliest, failing which the matter will be referred to Arbitration /court as per terms and conditions of RFP.



6. This is without prejudice to the rights and remedies available to the Govt under the terms and conditions of the contract and any other rights which are hereby fully reserved.
7. This has the concurrence from PIFA (Q&M) vide their UO No. 37345/PIFA (Q&M)/APO/1692/133 dated 18 Jul 2024 and has the approval of Competent Authority.
8. Please acknowledge the receipt of the letter.

Yours faithfully,


(Omkar L. Kanase)
Lt Col
OIC Pur-II (APO)
for Brig Proc



12. The letter dated 23.10.2024 reads as under:-

62603/12/2022-23/Veg Dhd/APO

Dated 23 Oct 2024

M/s Food King Impex Pvt Ltd
G - 37, Lawrence Road, Delhi - 110035
Email- foodkingimpex@gmail.com

**BILATERAL MEETING HELD ON 10 OCT 2024 AGAINST 06 MT PEAS DEHYDRATED
AT NUMBER 62603/12/2022-23/VEG DHD/APO DATED 28 FEB 2023**

1. Refer the following:-

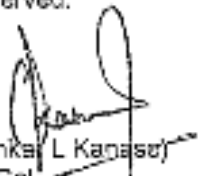
- RFP No 62603/Q/5/RFP/2022-23/Veg Dhd/APO (Pur-II) Dated 29 Dec 2022.
- AT Note No 62603/12/2022-23/Veg Dhd/APO dated 28 Feb 2023 for procurement of 06 MT Peas Dehydrated.
- This office letter No 62603/12/2022-23/Veg Dhd/APO dated 28 Aug 2024.
- Bilateral Meeting held on 10 Oct 2024.

2. It is intimated that Bilateral Meeting was held with your firm on 10 Oct 2024 regarding pending claim amount against Failed to Perform Within Warranty (FTPWW) quantity of Peas Dehydrated against AT Number 62603/12/2022-23/Veg Dhd/APO dated 28 Feb 2023.

3. It is once again requested to submit the claim amount Rs 24,37,236/- (Rupees Twenty Four Lakh Thirty Seven Thousand Two Hundred Thirty Six only) in form of Demand Draft (DD) against the following Failed to Perform Within Warranty (FTPWW) stocks by 10 Nov 2024, failing which the matter will be referred to Arbitration/court as per terms and conditions of contract :-

Ser No	Qty (In kgs)	CFL Indent Mark	Batch / Lot No	Warranty Period	Goods held at
(a)	1398.000	GS/FLD/58/2023	5	Dec 2024	FSD ASC Leh
(b)	800.000				503 ASC Bn
(c)	200.000				275 Coy ASC
(d)	2000.000				FSD ASC Srinagar
(e)	1196.000				FSD Udhampur
Total	5394.000				

4. This is without prejudice to the rights and remedies available to the Government under the terms and condition of contract and any other rights which are hereby fully reserved.


(Onkar L Kanase)
Lt Col
OIC Pur II (APO)
for Brig Proc



13. A perusal of both the letters shows that the petitioner has enumerated the disputes between the parties and has also evinced its intention to initiate arbitration proceedings in case the demands are not met.
14. To my mind, the same is sufficient compliance of notice invoking arbitration.
15. This Court in ***The Prasara Bharati v. Visual Technologies India Pvt. Ltd.*** passed in **ARB.P. 558/2023**, has held that notice invoking arbitration does not require any fixed format. The relevant paragraphs reads as under:

“8. Section 21 of the 1996 Act reads as under:

“21. Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

9. There is no fixed format of notice invoking arbitration. The requirement in law is that the party invoking arbitration must highlight the disputes between the parties and make a request that in case the disputes are not resolved, arbitration proceedings shall be commenced. The intention to invoke the redressal of disputes through the arbitral process must clearly spelt out in the notice. Hence in my view, the notice under Section 21 of 1996 Act must clearly state as follows:—

a. The dispute between the parties.

b. The demand to resolve the disputes as per the envisaged arbitration clause.



c. In case, the disputes are not resolved the intention to resort to the arbitral process.

d. The notice must be sent to the respondent.”

16. The same was also reiterated in ***National Research Development Corpn. v. Ardee Hi-Tech (P) Ltd., 2025 SCC OnLine Del 3659.***
17. To my mind, the above letters meet the aforesaid parameters, as they clearly indicate the intent of the petitioner that, in the event the amount is not paid, the matter shall be referred to the Arbitrator.
18. I am satisfied that there exists a valid arbitration clause and there are disputes between the parties which need to be adjudicated through the arbitral mechanism, and that the petitioner has already conveyed its intent to arbitrate the said disputes.
19. For the said reasons, the petition is allowed and the following directions are issued:-
 - i) Mr. Rohan Yadav, Advocate (Mob. No. 9871574138) 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.

20. The present petition is disposed of in the aforesaid terms.

DECEMBER 18, 2025 / (MS)

JASMEET SINGH, J