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

+ **ARB.P. 2026/2024**

FRANCO LEONE LTD

.....Petitioner

Through: Mr. Ashish Verma, Mr. Nikhil
Thakur, Mr. Kartikay Bhargava, Adv.

versus

DELHIVERY PVT LTD

.....Respondent

Through: Mr. Aditya Trehan, Ms. Shruti Bajpai,
Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **23.04.2025**

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator for adjudication of disputes between the parties, arising out of an agreement dated 05.06.2017.
2. The brief facts of the case are that the parties entered into an agreement, wherein the respondent agreed to transport the goods of the petitioner at different places in India.
3. On 14.06.2017, an addendum to the agreement was signed by the parties.
4. The agreement dated 05.06.2017 contained arbitration clause, being clause No.13.1, which reads as under:

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13 MISCELLANEOUS:

1. **Governing Law and Dispute Resolution:** This Agreement shall be governed by the laws of India, for the time being in force and the courts at New Delhi shall have exclusive jurisdiction to preside over matters arising hereunder. The Parties shall first endeavor to resolve their disputes amicably within fifteen (15) days from the date on which the dispute was first notified. In the event, the Parties fail to resolve the dispute amicably, the dispute shall be referred to arbitration. If the Parties are not able to agree on a sole arbitrator, a panel of three arbitrators shall be appointed wherein each Party shall appoint one arbitrator within 15 days of the expiry of the matter being referred to arbitration, and the two arbitrators together shall appoint the presiding arbitrator within 15 days of the appointment of the last of the two arbitrators. The venue/seal of Arbitration shall be Gurgaon and the language of arbitration shall be English. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect.

5. Since there were disputes between the parties, the petitioner invoked arbitration *vide* legal notice dated 30.01.2020.
6. Thereafter, the present petition has been filed.
7. Pursuant to the said notice, the learned arbitrator was appointed by the petitioner to adjudicate the disputes between the parties. However, in view of the judgment of **Perkins Eastman Architects DPC & Ors. v. HSCC (India) Ltd., (2020) 20 SCC 760**, the arbitral proceedings were challenged by the respondent under Section 14 petition filed in Gurgaon. The operative portion of the judgment of Perkins reads as under:-

“21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was concerned with the issue, “whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator” The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator

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and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72]”

8. Mr. Trehan, learned counsel for the respondent, argues that *vide* the order dated 01.05.2024 passed by the Gurgaon Commercial Court in the Section 14 petition filed by the respondent, the said court has already given a finding that courts at Gurgaon will have jurisdiction.
9. He further states that the said order has not been challenged by the petitioner and hence, the finding that the courts at Gurgaon will have

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jurisdiction has attained finality *vis-à-vis* the parties in the present case.

10. On perusal, I do not agree with the submissions of the learned counsel for the respondent as the said order of the Additional District Judge cum Presiding Judge, Exclusive Commercial Court in a Section 14 petition filed by the respondent at Gurgaon is not binding on this Court.
11. The fact that Delhi High Court will not have the jurisdiction in the present case is at best an opinion of the learned ADJ.
12. Additionally, the section 14 petition was withdrawn by the respondent and thus, was dismissed on 29.01.2025. Thus, the findings in the order dated 01.05.2024 cannot be relied upon, as the said order merged with the final order dated 29.01.2025.
13. Additionally, the Coordinate Bench of this Court in a petition filed under Section 11 of the Act by the respondent itself has adjudicated a similar clause in *Delhivery Limited v. Sterne India Private Limited*, 2024:DHC:8824. The operative portion of the judgment reads as under:-

“4. Clause 19 of the aforesaid agreement contains an arbitration clause as follows:-

*“19. Governing Law and Dispute Resolution:
This Agreement shall be governed by the laws of India, for the time being in force and the courts at New Delhi shall have exclusive jurisdiction to preside over matters arising hereunder. The Parties shall first endeavour to resolve their disputes amicably within fifteen (15) days from the date on which the dispute was first notified. In*

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the event, the Parties fail to resolve the dispute amicably, the dispute shall be referred to arbitration. The Parties agree to mutually appoint a sole arbitrator. The venue/seat of Arbitration shall be Gurgaon and the language of arbitration shall be English. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect.”

5. It can be seen from the aforesaid clause that the choice of seat is not unequivocal and Gurgaon has been referred to as the venue/seat of arbitration. More importantly, however, the preceeding part of the same clause specifically contemplates that Courts at New Delhi shall have exclusive jurisdiction to preside over “matters arising hereunder”. The succeeding part of the clause provides for the arbitration mechanism. It is thus evident, that the arbitration mechanism created under Clause 19 has been made, by the very same clause, to be subject to the exclusive jurisdiction of Courts in New Delhi.

6. Thus, the situation involved in the present case is akin to the situation in Cars24 Services Pvt. Ltd. v. Cyber Approach Workspace LLP AIR OnLine 2020 Del 1577 wherein the seat of arbitration was prescribed to be New Delhi and the same clause therein provided that “either party may approach a Court of competent jurisdiction at Haryana for appointment of the Sole Arbitrator”. In this context it was

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observed by this Court as under:-

“Where, therefore, the seat of arbitration is at place X, and exclusive jurisdiction over the subject matter of the suit is conferred on courts at place Y, a petition under Section 11 would unquestionably lie before the courts at place X. The present case, however, is different, as the exclusive jurisdiction conferred by the arbitration agreement is not in respect of the subject matter of the suit but specifically for appointment of an arbitrator. It would be doing violence to the said clause, therefore, if this Court were to treat the exclusive jurisdiction clause as limited to the subject matter of the suit, and exercise Section 11 jurisdiction contrary to the mandate thereof.”

.....

9. It has also been rightly pointed out by the petitioner that in the context of an identical clause, this Court in Delhivery Ltd. v. Transkart Logistics Pvt. Ltd. & Anr. ARB.P. 167/2023 has exercised jurisdiction under Section 11 of the A&C Act.

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13. Thus, this Court has jurisdiction to entertain the present petition. It has been authoritatively held in SBI General Insurance Co. Ltd. v. Krish Spinning 2024 SCC OnLine 1754, that the scope of examination in proceedings under

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section 11 A&C Act is confined to ascertaining the ‘existence’ of the arbitration agreement. Since the existence of the arbitration agreement is admitted in the present case, there is no impediment for this Court to constitute an Arbitral Tribunal to adjudicate the disputes between the parties.”

14. I am of the view that in the aforementioned judgment, the Coordinate Bench of this Court has correctly interpreted clause No.19, the arbitration clause, to allow this Court to have jurisdiction in appointment of the arbitrator. The same was also the contention of the respondent, which was upheld by this Court. The respondent cannot be permitted to take contradictory stands in different petitions.
15. In view of the matter, I am inclined to allow the present petition.
16. Even though the venue of arbitration is Gurgaon, learned counsel for the respondent has no objection if the arbitration is conducted under the aegis of the Delhi International Arbitration Centre (“DIAC”) at New Delhi.
17. For the said reasons, the petition is allowed and the following directions are issued:-
 - i) Mr. Harpreet Singh, Adv. (Mob. No. 9811253531) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) The arbitration will be held under the aegis of the DIAC, Delhi High Court, Sher Shah Road, New Delhi and as per the DIAC Rules.
 - iii) The remuneration of the learned Arbitrator shall be in terms of

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- 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.
18. The present petition is disposed of accordingly.
19. The order dated 29.01.2025 handed over in Court today is taken on record.

JASMEET SINGH, J

APRIL 23, 2025 / (MS)

[Click here to check corrigendum, if any](#)

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