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

\+ O.M.P.(I) (COMM.) 338/2025

MACGALE PNEUMATICS PVT. LTD. .....Petitioner

Through: Mr. Pankaj Kapoor, Mr. Shikhar Singh and Mr. Ajay Pal Singh, Advs. M: 9650794341

versus

BEIJING SPC ENVIRONMENT PROTECTION TECH CO LTD. .....Respondent

Through: Mr. Gitesh Chopra and Mr. Siddharth Singh, Advs.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% **12.02.2026**

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 **("Arbitration Act")**, seeking urgent interim relief of injunction, restraining the respondent from invoking the two Bank Guarantees furnished by the petitioner as per the Contract Agreement dated 14th January, 2021.

2. The petitioner was awarded a contract through the Letter of Intent **("LoI")** dated 08th December, 2020, followed by execution of a Contract Agreement on 14th January, 2021, with respect to the Material Handling System for the Flue Gas Desulphurisation **("FGD")** Package at *Anpara 'D' Thermal Power Station*.

3. In terms of the Contract Agreement dated 14th January, 2021, between the parties, the petitioner furnished two Bank Guarantees to the respondent.

4. It is the case of the petitioner that the respondent issued a suspension

letter dated 08th May, 2025, without any prior indication or notice of dissatisfaction. Further, the said letter neither provided any reasons nor the duration of the said suspension.

5. It is further the case of the petitioner that without allowing the mandated 180 days period for suspension to elapse, the respondent issued a letter dated 06th August, 2025, which was served upon the petitioner on 06th August, 2025, thereby, terminating the contract and demanding a refund of the advance payment of Rs. 4,26,80,285/-.

6. At this stage, it is pertinent to note that learned Senior Counsel appearing for the petitioner on 19th August, 2025 had made the following statement in respect of the date of termination of contract:

> *"xxx xxx xxx*
>
> 6. It is the case of the petitioner that the respondent suspended the Contract with the petitioner *vide* suspension letter dated 8th May, 2025, without providing any reasons for the suspension or the duration for the suspension. The said letter was followed by a letter dated 6th July, 2024, sent to the petitioner *vide* e-mail dated 6th August, 2025, in terms of which, the respondent terminated the Contract and demanded the refund of the advance payment of Rs.4,26,80,285/-.
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> 7. Mr. Devendra Chauhan, senior counsel appearing on behalf of the petitioner submits that even if it is assumed that there was a typographical error in the communication dated 6th July, 2024 and the same should be read as 6th July, 2025, there was no reason why this communication was sent by the respondent to the petitioner a month later i.e. on 6th August, 2025.
>
> *xxx xxx xxx"*

7. As per the case put forward on behalf of the petitioner, the petitioner responded to the aforesaid termination letter *vide* letter dated 06th August, 2025, claiming an amount of Rs. 9,30,51,219/- from the respondent on account of abrupt suspension/termination.

8. Thus, as per the petitioner, the said termination of the contract by the respondent grossly violates the mandatory procedures prescribed under the Contract Agreement, by proceeding directly from suspension to termination, without following the mandatory procedural safeguards enshrined in the Contract Agreement.

9. The cause of action for filing the present petition arose since the respondent took steps to invoke the Bank Guarantees furnished by the petitioner, *vide* its communication dated 14th August, 2025 to the Bank of Baroda, Dharampeth Branch, Nagpur.

10. It is also to be noted that the petitioner, in response, had also addressed a communication to the respondent on 18th August, 2025, thereby, rejecting the termination, disputing the demand for refund of advance and placing on record that any attempt to invoke the Bank Guarantees would be illegal and violative of the terms of the Contract Agreement.

11. By way of the aforesaid communication dated 18th August, 2025, petitioner had stated that in case of respondent's failure to positively reply to the invitation for settlement, the petitioner shall be constrained to refer the matter to arbitration in terms of the Arbitration Clause contained in the Contract Agreement, i.e., *Article 9.*

12. It is, thus, the case of the petitioner that the respondent's actions of first suspending the contract without cause, then proceeding to terminate the same in violation of the mandatory procedures, and thereafter, seeking to encash the Bank Guarantees, despite the pendency of the claims of the petitioner is arbitrary. Thus, the present petition has come to be filed.

13. *Per contra*, it is the case of the respondent that the Contract Agreement dated 14th January, 2021 stood terminated *vide* its letter dated 06th August, 2025 (which was inadvertently mentioned as 06th July, 2024 due

to a typographical error), issued through an E-mail dated 06th August, 2025. The said termination of the Contract Agreement between the parties was necessitated not only due to the applicant's failure to duly complete its contractual obligations but also owing to the termination of the main contract by the principal employer, i.e., Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited **("UPRVUNL")**.

14. Thus, as per the case put forth on behalf of the respondent, the petitioner cannot be permitted to take advantage of any alleged procedural lapse under any Clause of the Contract Agreement, when the petitioner itself was in breach of its contractual obligations.

15. This Court notes that the parties had entered into the Contract Agreement dated 14th January, 2021, for "*Design, Engineering, Procurement, Manufacturing, Supply & Supervision for Installation & Commissioning of Material Handling Systemfor the FGD Package at Anpara 'D' Thermal Power Station"*.

16. The said Contract Agreement was terminated by the respondent *vide* its communication dated 06th August, 2025 (inadvertently mentioned as 06th July, 2024), issued through an E-mail dated 06thAugust, 2025.

17. Under the said Contract Agreement, the petitioner has furnished two Bank Guarantees to the respondent. The details of the said Bank Guarantees furnished by the petitioner to the respondent, maintained with Bank of Baroda, Dharampeth, West High Court Road, Nagpur, Maharashtra, are given below:

S. No.	Bank Guarantee No.	Dated	Amount
1.	0465IGP000268821	25th January 2021	Rs 2,86,05,000/-
2.	0465IGP003050521	10th December 2021	Rs.1,43,02,500/-

18. This Court notes that when the present matter was listed for hearing

on 19th August, 2025, the Court passed an interim order in favour of the petitioner. The relevant portions of the said order 19thAugust, 2025 read as under:

> *"xxx xxx xxx*
>
> *17. A prima facie case is made out in favour of the petitioner and against the respondent. Balance of convenience is also in favour of the petitioner, as irreparable loss would be caused to the petitioner if the bank guarantees are invoked by the respondent.*
>
> *18. Consequently, till the next date of hearing, status quo shall be maintained with regard to the aforesaid bank guarantees.*
>
> *xxx xxx xxx"*

19. This Court further notes that the aforesaid interim order is still continuing by way of the subsequent orders passed by this court in the present petition.

20. Both the parties are *ad-idem* that the Contract Agreement between the parties contains an Arbitration Clause, i.e., *Article 9*. The said Clause of the Contract Agreement is reproduced as under:

"xxx xxx xxx

Article-9

ARBITRATION

The Parties hereto shall endeavour to settle all disputes and differences relating to and/or arising out of the Contract relating to the construction, meaning, scope, operation or effect of this Contract or the validity or the breach thereof which may at any time arise between the parties to this Contract in connection with the Contract or any matter arising out of or in relation thereto ("**Dispute**") amicably within a period of 30 days.

In the event the Parties fail to resolve a Dispute amicably within the period of 30 days, such Dispute shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of Delhi International Arbitration Centre, which rules are deemed to be incorporated by reference in this clause. The seat and venue of the arbitration shall be New Delhi. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English.

The Parties agree that any arbitration award shall be final and binding upon the Parties.

PROJECT OFFICE INDIA

PNEUMATICS

The Parties hereto agree that the Supplier shall be obliged to carry out its obligations under the Contract even in the event a dispute is referred to Arbitration. It is further clarified that the Purchaser shall be entitled to retain any sum or portion of Contract Price which has become due and payable for any unfinished Works or any subject matter under arbitration.

xxx xxx xxx"

21. A perusal of the aforesaid Arbitration Clause shows that there exists a valid Arbitration Clause between the parties, and that this Court has jurisdiction to appoint an Arbitrator, as the seat of arbitration is in New Delhi.

22. Learned counsel appearing for the petitioner, at this stage, submits that the petitioner has an approximate claim of Rs. 7 Crores 30 Lacs towards the Contract Agreement executed between the parties.

23. This Court is informed by the petitioner that the petitioner has already invoked the Arbitration Clause and has approached the Delhi International Arbitration Centre **("DIAC")** in terms of the procedure laid down in DIAC Rules, 2023 **("DIAC Rules")**. Additionally, the respondent also has filed a response before the DIAC.

24. This Court is further informed that though the parties have approached the DIAC and there has been mutual correspondence with the DIAC, however, since an Arbitrator is yet to be appointed, a formal Statement of Claim **("SoC")** is yet to be filed by the petitioner.

25. Both the parties are also *ad-idem* that this Court can proceed to appoint an Arbitrator, since an Arbitrator is yet to be appointed in the present matter, though the parties have already approached the DIAC.

26. Accordingly, this Court is satisfied that there exists a valid Arbitration Clause for the adjudication of the disputes, which have arisen between the parties, and thus, there is no impediment in appointment of an Arbitrator.

27. At this stage, learned counsel appearing for the respondent submits that the respondent may also be granted an opportunity to file counter-claims before the Arbitrator.

28. Accordingly, with the consent of the parties, the following directions are issued:

i. Justice (Retd.) G.S. Sistani, former Judge, Delhi High Court (Mobile No.: +91 - 9871300034) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii. The arbitration proceedings shall be held under the aegis and Rules of DIAC, Delhi High Court, Sher Shah Road, New Delhi.

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 Arbitration Act prior to entering into the reference. In the event of any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.

v. It shall be open to the respondent to raise counter-claims, if any, in the arbitration proceedings.

vi. 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.

vii. The petitioner is granted liberty to approach the Sole Arbitrator immediately, and seek reliefs, which form subject matter of the present petition.

viii. With the consent of the parties, it is directed that the interim order dated 19th August, 2025 shall continue to operate till the same is modified by the learned Arbitrator.

29. Needless to state, nothing in this order shall be construed as an expression of this Court on the merits of the case.

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

31. The Registry is directed to send a copy of this order to the learned Sole Arbitrator, as well as the Secretary, DIAC, for their information and compliance.

MINI PUSHKARNA, J

FEBRUARY 12, 2026/KR