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

# **CNR No. DLHC011035072025**

+ **ARB.P. 2101/2025**

**INDIA TRADE PROMOTION ORGANISATION  
(I.T.P.O.)**

.....Petitioner

Through: Mr. Arun Sanwal & Mr. Aditya M  
Sharma, Advs.

versus

**M/S ORIENT MARINE LINES PVT LTD**

.....Respondent

Through: Mr. Aslam Ahmed, Mr. Rohit Jain,  
Ms. Ankita Sharma & Mr. Abhishek  
Dwivedi, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE AVNEESH JHINGAN**

**ORDER**

**19.08.2026**

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1. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of an arbitrator.
2. The brief facts are that the petitioner vide e-tender no. ITPO/BDD/CHA/2018 invited bids for the empanelment of five Custom House Agents for handling exhibition cargo at Pragati Maidan, New Delhi. The respondent was the successful bidder and an empanelment agreement was executed between the parties on 11.10.2018. Under the agreement the respondent was liable to pay the empanelment fee. Dispute arose between the parties with regard to payment of outstanding dues *qua* the empanelment fee. The empanelment of the respondent was terminated *vide* letter dated 09.11.2021. Clause 9 of the agreement provided for dispute resolution through arbitration. Notice invoking arbitration was served on 20.10.2023



by the petitioner. On failure to do the needful, the present petition is filed.

2.1 Clause 9 of the agreement is quoted below:-

“9. DISPUTE RESOLUTION

All disputes or differences between the Parties arising out of or related to the construction, operation and manning or giving effect of this Agreement or the breach thereof shall be settled by a sole arbitrator appointed by the CMD, ITPO, in accordance with the Arbitration and Conciliation Act, 1996 as amended or re-enacted from time to time, whose decision shall be final and binding on all the Parties. All arbitration proceedings will be conducted in the English Language and the venue for the same will be New Delhi.”

3. Learned counsel for the respondent on instructions has no serious objection for referring the matter to arbitration.

4. The scope of the reference court under Section 11 of the Act is well defined. The existence of an arbitration clause and a *prima facie* dispute is to be seen and the rest of the issues are to be considered by the arbitrator.

5. The undisputed fact is that clause 9 of the agreement provides that in case of dispute between the parties the matter shall be referred for arbitration. The law is well settled that the official of a party to the dispute can neither be appointed as an arbitrator nor can appoint an arbitrator. The portion of clause 9 of the agreement providing for appointment of the arbitrator by the petitioner is void and does not dent the substantive agreement to arbitrate between the parties.

6. The Supreme Court in ***Hindustan Construction Company Ltd.*** (supra) dealt with an arbitration clause providing that no person other than a person appointed by the Managing Director or administrative head of the Nigam should act as arbitrator and if such appointment is not possible then



the matter is not arbitrable. It was held that the exclusive power with the contractee to appoint arbitrator is unenforceable and should be severed but the agreement of arbitration survives. The portion of the clause that for any reason the arbitration by the arbitrator appointed by the contractee is not possible the matter shall not be referred to arbitration at all violates Section 18 of the Act. The relevant paragraphs of the judgment are reproduced below:

"61. Accordingly, the portion of Clause 25 that vests exclusive appointment power in one party and forecloses arbitration in default of such appointment must be severed as void and unenforceable. However, the substantive agreement to arbitrate survives by virtue of the doctrine of severability.

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63. The present contract, being a public-private contract, must withstand not only conventional contractual scrutiny but also constitutional scrutiny. As held in CORE II, arbitral appointments in public contracts must satisfy the requirements of fairness, equality, and non-arbitrariness under Article 14.

64. The sub-clause in Clause 25 which provides that "if for any reason the matter shall not be referred to arbitration" is vague, uncertain, and arbitrary. The expression "for any reason" confers an unguided and absolute veto, particularly objectionable in a public contract. Such a clause fails the test of manifest arbitrariness and violates Section 18 of the Act, which mandates equal treatment of parties.

65. In light of the above discussion, the following propositions emerge:

- (i) The parties' conduct clearly demonstrates their intention to arbitrate, satisfying the requirement of Section 7(4)(c);
- (ii) Clause 25, in its substantive form, constitutes a valid arbitration agreement;



(iii) The unilateral and exclusionary appointment mechanism is void and severable; and

(iv) This Court is empowered under Section 11(6) to cure the defect and appoint an independent arbitrator.

66. Accordingly, it is held that a valid and subsisting arbitration agreement exists between the parties. Clause 25, when read in its entirety and construed in accordance with the doctrine of severability, satisfies the statutory requirements of an arbitration clause under Section 7 of the Act. The contrary finding of the High Court is unsustainable in law and is liable to be set aside."

7. Accordingly, the petition is allowed by appointing Mr. Harish Pandey, Advocate (Mobile No. 9891297497) as the sole arbitrator for adjudication of the disputes which have arisen between the parties.

8. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre (DIAC). Fee of the Arbitrator shall be fixed as per fee schedule.

9. Before entering upon reference, the learned Arbitrator will comply with Section 12 of the Act.

10. It is made clear that since this court has not expressed any opinion on the merits of the rival claims of the parties and it will be open for the parties to file their respective claims/counter claims before the learned Arbitrator which will be considered in accordance with law.

11. A copy of this order be forwarded to the learned Arbitrator for information.

**AVNEESH JHINGAN, J**

**AUGUST 19, 2026**

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