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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 05.02.2026

+ O.M.P.(I) (COMM.) 501/2025

INTENSE TECHNOLOGIES LIMITED

.....Petitioner

Through: Mr. Abhinay Tiwari, Ms.
Vennela Reddy and Mr.
Mayank Bhargava, Advocates

versus

BHARAT SANCHAR NIGAM LIMITED

.....Respondent

Through: Ms. Sangeeta Sondhi and Mr.
Amit Patra, Advocates

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)

1. The present Petition, under Section 9 of the Arbitration and Conciliation Act, 1996 [“Act”], has been filed seeking the following reliefs:

“a. Pass an ex-parte ad interim order restraining the Respondent, its officers, agents, representatives and all persons acting on its behalf from invoking, encashing or taking any steps to appropriate the Performance Bank Guarantee of INR 2.25 Crore furnished by the Petitioner vide PBG No. 16340100015197 for the CACMS project under Work Order No. CE/WO/02/CACMS/2016-17 dated 23.06.2016, pending the constitution of the Arbitral Tribunal and final adjudication of disputes through arbitration;

b. Pass an ex-parte ad interim order directing the Respondent to forthwith make arrangements for the return of all hardware, equipment, servers, storage systems, switches and other infrastructure deployed by the Petitioner at the Respondent's premises for the CACMS project, and to provide the Petitioner access to retrieve the said hardware and equipment within a period of fifteen (15) days from the date of this order;



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- c. Initiate arbitration proceedings in accordance with the arbitration clause contained in the CACMS contract for final adjudication of all disputes between the parties including claims for compensation for losses suffered by the Petitioner due to the Respondent's breaches of contract.
- d. Award costs of the present petition in favour of the Petitioner;
- e. Pass such further or other orders as this Hon'ble Court may deem fit and proper in the interests of justice."

2. Learned counsel for the Respondent submits that there was no occasion for this Court to have passed the Order dated 05.12.2025, whereby the encashment of the Performance Bank Guarantee ["PBG"] was stayed, contending that the said stay was granted merely on an apprehension of encashment.

3. However, learned counsel further states that she has no objection if the present dispute is referred to arbitration for adjudication.

4. Learned counsel appearing for the Petitioner also endorses the consent for the appointment of an Arbitrator by this Court in the present proceedings.

5. Since learned counsel for both parties are *ad idem* that the disputes be referred to arbitration to be conducted under the *aegis* of the Delhi International Arbitration Centre ["DIAC"], the same is being considered accordingly.

6. It is noted that the learned counsel for the parties are *ad idem* that the disputes between them are governed by the arbitration clause contained in Clause 21 of the General Commercial Conditions of Contract, as envisaged in the Tender Document dated 08.12.2015. The parties are also in consensus regarding the appointment of an Arbitrator. For the sake of convenience, the arbitration clause, i.e., Clause 21, is reproduced hereunder:



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“21. ARBITRATION

21.1 In the event of any question, dispute or difference arising under this agreement or in connection there-with (except as to the matters, the decision to which is specifically provided under this agreement), the same shall be referred to the sole arbitration of the CMD, BSNL or in case his designation is changed or his office is abolished, then in such cases to the sole arbitration of the officer for the time being entrusted (whether in addition to his own duties or otherwise) with the functions of the CMD, BSNL or by whatever designation such an officer may be called (hereinafter referred to as the said officer), and if the CMD or the said officer is unable or unwilling to act as such, then to the sole arbitration of some other person appointed by the CMD or the said officer. The agreement to appoint an arbitrator will be in accordance with the Arbitration and Conciliation Act 1996. There will be no objection to any such appointment on the ground that the arbitrator is a Government Servant or that he has to deal with the matter to which the agreement relates or that in the course of his duties as a Government Servant he has expressed his views on all or any of the matters in dispute. The award of the arbitrator shall be final and binding on both the parties to the agreement. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the CMD, BSNL or the said officer shall appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.

21.2 The arbitrator may from time to time with the consent of both the parties enlarge the time frame for making and publishing the award. Subject to the aforesaid, Arbitration and Conciliation Act, 1996 and the rules made there under, any modification thereof for the time being in force shall be deemed to apply to the arbitration proceeding under this clause.

21.3 The venue of the arbitration proceeding shall be the office of the CMD, BSNL, New Delhi or such other places as the arbitrator, may decide.”

7. In view of the consensus regarding the appointment of an Arbitrator, the parties expressly waive the mandate of the arbitration clause insofar as it relates to the procedure for the appointment of the Arbitrator. The parties also waive the requirement of issuance of a formal notice under Section 21 of the Act, as well as the necessity of



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filing a petition under Section 11 of the Act.

8. Since the parties have mutually consented to the appointment of an Arbitrator, and this Court is of the view that the commencement of arbitral proceedings should not be unduly delayed, it would be in the interest of justice that an Arbitrator be appointed.

9. It is noted that the parties are *ad idem* that the value of the disputes is approximately ₹13 Crore.

10. Accordingly, this Court requests **Hon'ble Mr. Justice Dharmesh Sharma (Retd.)**, (E-mail id- [REDACTED]) to enter into the reference as the learned Arbitrator to adjudicate the disputes as between the parties.

11. The arbitration proceedings shall be conducted under the aegis of the DIAC and shall be governed by its rules and regulations. The learned Arbitrator shall be entitled to fees in accordance with the Schedule of Fees prescribed by the DIAC.

12. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Act within a week of entering of reference.

13. The Registry is directed to forward a copy of this order to the learned Arbitrator through all permissible modes, including electronic mail.

14. All rights and contentions of the parties, including those relating to claims and counter-claims, are kept open and shall be adjudicated by the learned Arbitrator on their merits, in accordance with law. Needless to say, nothing contained in this order shall be construed as an expression of opinion by this Court on the merits of the disputes between the parties.



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15. The amended petition filed pursuant to the liberty granted to the Petitioner *vide* Order dated 05.12.2025 shall be treated as an application under Section 17 of the Act, and appropriate directions may be passed by the learned Arbitrator after entering upon the reference.

16. So far as the stay on encashment of the PBG granted *vide* Order dated 05.12.2025 is concerned, the said *status quo* shall continue until the learned Arbitrator enters upon the reference and takes up the Section 17 application for consideration.

17. The parties are at liberty to raise all objections, including with respect to the jurisdiction of the Arbitrator, before the learned Arbitral Tribunal.

18. Let a copy of this Order be transmitted to the DIAC for necessary information and action.

19. Accordingly, the present Petition, along with all pending Application(s), if any, is disposed of.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 5, 2026/ rk/va/dj