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

Date of decision: 17.03.2025

+ **ARB.P. 1443/2024**

RAHUL VERMA SOLE PROPRIETOR OF M/S JAI SHREE
NATHJI LOGISTICS (INDIA)Petitioner

Through: Mr. Hari Kishan, Adv.

versus

CONTAINER CORPORATION OF INDIA LTD.Respondent

Through: Mr. SC Rajpal, Mr. Varun Rajpal,
Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties arising out of the Contract Agreement bearing No. CON/DD/2012/B.A/32 dated 14.05.2012 (“*agreement*”).

2. The arbitration clause is contained as clause 6.12 of the said agreement and the same reads as under:

“6.12 ARBITRATION:

6.12.1 Any dispute between the Business Associate and CONCOR will be resolved amicably by mutual consultations or through the good offices of the Director Domestic/CONCOR.



However, if such resolution is not possible, then, the unresolved disputes or differences shall be referred to an arbitrator, to be nominated by the Director Domestic/CONCOR. The Arbitration and Conciliation Act 1996 shall be applicable to the arbitration under this clause. The award of arbitrator shall be binding upon both parties to the dispute.

6.12.2 The services under this agreement shall be continued during the Conciliation/arbitration proceedings, unless it is proved that the services cannot possibly be continued during the arbitration proceedings”

3. The facts are that the petitioner is engaged in the business of domestic cargo logistic works for various Government Departments. The petitioner entered into the agreement with the respondent for promotion of domestic cargo logistics etc, whereby, the petitioner was to perform the function of booking and transportation of cargo from major centers of production and consumption for and on behalf of the respondent. The agreement was thereafter, extended from time to time.

4. Since, the respondent failed to adhere to the terms of the agreement, the petitioner invoked arbitration in terms of clause 6.12 *vide* legal notice dated 30.12.2017.

5. The said legal notice was responded by the respondent *vide* letter dated 06.02.2018 which is reproduced below: -



CON/NR/DSO/legal/2017

Date: 06.02.2018

Sh. Suresh Mohta
Advocate
Opposite Mohta Hospital
Mohta Chowk
Bikaner

Ref.: Your legal notice dtd. 30.12.2017 of behalf of M/s Jai Shree Nath Ji (Logistics)

Dear Sir,

Please refer your legal notice dtd. 30.12.2017 received on 05.01.2018 and noted the contents thereof. In this regard, the Competent Authority intends to appoint an Arbitrator i.e. CONCOR's official as per the prior agreement with M/s Jai Shree Nath Ji (Logistics).

In this regard, please give your consent/NOC within 07 days i.e. up-to 13.02.2018 for appointment of CONCOR's official as an Arbitrator to resolve the disputes.

-Sd-
DGM (Comml)
Northern Region

Copy to:

Sh. Rahul Verma, Proprietor
M/s Jai Shree Nath Ji (Logistics)
Flat No. 403,
Opposite Meena Nursing Home
Rani Bazar
Bikaner- 334001
Rajasthan

6. Thereafter, the petitioner replied to the aforesaid letter vide letter dated 12.02.2018 which reads as under: -



Dt. 12.02.2018

To

DGM (Comml) Northern Region
CONCOR
Concor bhawan, C 3 Mathura road,
Opposite Apolo Hospital,
New Delhi 110076

Reference : Your letter CON/NR/DSO/Legal/2017 dt 6-2-2018 (about our legal noticed. 30.12.2017 by Sh. Suresh Mohta advocate bikaner)

Dear Sir,

As per your requirement we are giving our CONSENT/NOC about Appointment of CONCOR's official as an Arbitrator to resolve the disputes, which were mentioned in the legal notice dt. 30.12.2017.

Please appoint the Arbitrator as soon as possible and inform us in writing.

Yours

Rahul Verma

Sd-
Stamp

7. Pursuant thereto, the respondent appointed a sole arbitrator, who passed the arbitral award dated 28.08.2019 disallowing all the claims of the petitioner. The petitioner challenged the said arbitral award by filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996, which was dismissed by the learned District Judge (Commercial Court-03), South-East District, Saket Courts, New Delhi on merits as well as on the grounds of delay.

8. Mr. Kishan, learned counsel for the petitioner states that unilateral



appointment of the arbitrator is hit by virtue of Section 12(5) of the Arbitration and Conciliation Act and in this regard, relies upon the judgment passed by a coordinate bench of this court in O.M.P.(T)(COMM.) 16/2021, dated 12.11.202, titled ***Delhi Integrated Multi Modal Transit Systems Ltd. vs. Delhi Jal Board*** and more particularly paragraphs 27 and 34 which read as under:-

“27. In view of the above, the principal question to be addressed is whether the appointment of Dr RCM as an arbitrator was by concurrence of the petitioner or unilaterally by the respondent as contended on behalf of the petitioner. Ms Bharti had contended that the learned Arbitrator was appointed “by mutual consent of both the parties” as contemplated under Article IX of the Contract. However, this Court is unable to accept the aforesaid contention. There is no material on record to indicate that the respondent had recommended the name of Dr RCM to the petitioner and the petitioner had accepted the same. On the contrary, Office Order no. 18 dated 03.12.2018 issued by the respondent indicates that the CEO of the respondent company had appointed the learned Arbitrator. Prior to such appointment, the respondent had also constituted a panel of arbitrators for DJB by an Office Order No. 43 dated 08.11.2018. The said panel comprised of ten former officers of the State Government/Central Government or entities under their administrative control, and one Advocate. The name of the learned Arbitrator was included at Serial No. 10 of the said Office Order. Undisputedly, the respondent had appointed the learned Arbitrator pursuant to the petitioner invoking the Arbitration Clause and requesting that an arbitrator be appointed to adjudicate its claims. The letters sent by the petitioner invoking the Arbitration Clause and requesting for the appointment of an arbitrator does not mean that the petitioner had concurred that Dr RCM be appointed by the respondent.



This Court is of the view that the appointment of the learned Arbitrator was made unilaterally by the respondent without reference to the petitioner.

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34. This Court is of the view that the decision in Bharat Broadband Network Limited v. United Telecoms Limited (supra) is applicable in the facts of this case. Although the petitioner had participated in the arbitral proceedings before the learned Arbitrator, the same cannot be construed as the petitioner waiving its right under Section 12(5) of the A&C Act. Once it is held that the appointment of the learned Arbitrator has been made unilaterally by the CEO of the respondent, it would follow that the said appointment is void ab initio.”

9. I have heard learned counsel for the parties.

10. It is an admitted fact that the petitioner, on 12.02.2018, gave a no objection to the appointment of an arbitrator by the respondent. Thereafter, an Arbitral Award came to be passed on 28.08.2019, disallowing all the claims of the petitioner. Aggrieved, the petitioner filed a petition under section 34 of the Arbitration and Conciliation Act, 1996 challenging the said award. The petitioner in the present petition, has primarily contended that the appointment of the arbitrator by the respondent is hit by section 12 (5) of the Arbitration and Conciliation Act, 1996 and therefore, a new arbitrator should be appointed.

11. I am unable to accept the submissions made by the petitioner.

12. In the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner categorically agitated the issue of unilateral appointment by the respondent.



13. The learned District Judge, while dismissing the section 34 petition filed by the petitioner categorically adjudicated the issue regarding the appointment of the arbitrator by the respondent being violative of section 12(5) of the Arbitration and Conciliation Act. In this regard, paragraph 10 of the judgment reads as under:-

“10. Though, in the present case the arbitration clause do not give any unilateral power of appointment of the Arbitrator to the respondent. Even otherwise the present Arbitrator was appointed only on the request of the petitioner/claimant who gave unqualified NOC/consent for appointment of Arbitrator. The proviso of this section clearly states that the parties may subsequent to the disputes having arisen between them waive the applicability of this sub section by an express agreement in writing. The petitioner has given the unconditional consent/NOC for appointment of CONCOR official as arbitrator, in response to the letter dated 06.02.2018 of the respondent, hence in present facts and circumstances, the arbitrator cannot be found ineligible in terms of Section 12 (5) of the Arbitration and Conciliation Act. The judgment of Hon’ble High Court of Delhi in case title ‘Man Industries (India) Limited Vs. Indian Oil Corporation Limited, 2023 SCC OnLine Del 3537’ as relied by the petitioner is also of no help in the present facts and circumstances as the consent in that case was given conditional but the in the present case the consent is unconditional and unqualified.”

14. Once the learned Sessions Court has categorically recorded a finding that the petitioner had given an unconditional consent/NOC for the appointment of the arbitrator, the only remedy available to the petitioner, if aggrieved by such a finding, is to challenge the said order by filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, assailing the order passed by the learned District Judge.



15. If the present petition is to be entertained and allowed by this Court, it would effectively amount to setting aside of the order passed by the learned District Judge under Section 34 of the Arbitration and Conciliation Act, 1996 by assuming the role of an Appellate Court under Section 37 of the Arbitration and Conciliation Act, 1996 which to my mind, cannot be so done. While exercising his rights under the Arbitration and Conciliation Act, 1996, the petitioner has invoked the jurisdiction of this Court under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996, but the present case does not fall within any of the parameters of Section 11.

16. For the said reasons, I am not inclined to entertain the present petition and hence, the same is dismissed.

JASMEET SINGH, J

MARCH 17, 2025 / (MS)

(Corrected and released on 02.04.2025)

Click here to check corrigendum, if any