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

\# **CNR No. DLHC010517772026**

\+ O.M.P.(I) (COMM.) 500/2026

SAM SURVEYORS AND ADJUSTERS .....Petitioner

Through: Mr. K. C. Dubey, Mr. Rishav Dubey, Mr. Pawan Kumar, Mr. Vineet Mishra, Ms. Uma Tarafdar, Advs.

versus

CONTAINER CORPORATION OF INDIA LTD .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 29.10.2026

1. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996[1] has been filed by the Petitioner, seeking interim protection against the partial termination notice dated 13.10.2026 issued by the Respondent, whereby the Respondent, has alleged repeated unsatisfactory performance of contractual obligations, and has granted a final opportunity to the Petitioner to rectify the deficiencies relating to Know Your Container Locations[2] and inventory management, which the Respondent proposed to take action in accordance with the contract.

[2] "KYCL" hereinafter

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2. The Petitioner also seeks to restraint the respondent from making any further forfeiture from the security deposit, effecting any recovery on a risk-and-cost basis or taking any action for blacklisting or debarment.

3. The material fact, as set out in the petition are that the Respondent, awarded a contract to the Petitioner by Letter of Acceptance dated 30.06.2023 for providing professional services relating to the survey of containers/cargo and inventory management at the Inland Container Depot, Whitefield, Bengaluru.

4. According to the petitioner, initially, the contract was awarded for a period of four years, with a provision for extension by one further year. The Petitioner was, *inter alia*, required to record the movement and location of containers within the yard through handheld terminals/Radio Data Terminals (RDTs), an activity referred to as KYCL operations.

5. Learned counsel appearing for the Petitioner submits that the alleged deficiencies in the performance of the contract are attributable to the Respondent's failure to provide the infrastructure and functional equipment necessary for carrying out KYCL operations.

6. It is submitted that the handheld devices supplied by the Respondent were defective network connectivity within the yard was inadequate, and proper yard mapping and markings had not been provided. The Petitioner contends that these deficiencies on the Respondent's part caused, or materially contributed to, the deficiencies

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now alleged against it.

7. It is further contended that the discrepancies in the records and the delay in making entries cannot, therefore, be attributed to any default on the part of the Petitioner.

8. Learned counsel for the petitioner further submits that the Respondents has already made deductions from the Petitioner's running bills on account of the alleged deficiencies and is now seeking to terminate the contract on the basis of the same allegations.

9. It is also contended that the impugned notice is contrary to Clause 8.1 of Chapter IV of the tender conditions, as the Petitioner has not been afforded a genuine and effective opportunity to rectify the alleged defaults within the contractual period.

10. It is submitted that the proposed termination may result in forfeiture of the security deposit, recovery on a risk-and-cost basis, and debarment from future tenders. According to the Petitioner, such consequences would cause serious financial and reputational prejudice which cannot adequately be remedied at a later stage.

11. I have heard learned counsel for the Petitioner and perused the material placed on record.

12. The relevant contractual provisions are contained in Chapter III and Chapter IV of the tender conditions. Clause 2.2.1 of Chapter III, insofar as relevant, reads as under:-

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"2.2.1. Perform specialized inventory management services in ICD/WFD as per requirement of CONCOR. The works would include recording details of container shifting within the yard by the equipments, loading and unloading of containers from/to the rail wagons and other Inventory Management in the yard. ****CONCOR has provided handheld terminals (HHTs) for feeding of container locations synchronizing with the handling being performed by the cranes/reach stackers. These HHTs are to be used with care. CONCOR may upgrade or replace these HHT's by a technologically more advanced device for this purpose.*** *On an average 4 to 8 moves per container are to be recorded at ICD/WFD yard However, this may increase or decrease and the contractor is required to provide services for recording each and every move of the machine to ensure proper tracking of the inventory through the HHTs/Devices. In case of non-availability of the HHT's/Devices, the moves will be recorded manually in a data sheet and subsequently updated in the computer system.*

Equipment Description	*No. of Equipment working**
Reach Stackers	*4*
Empty Handlers	*2*

** The number of Reach Stackers or Empty Handlers may increase or decrease. The contractor is required to deploy resources accordingly. This shall not be a reason for dispute and no claims or compensation shall be entertained by CONCOR in this regard."*

13. Clause 8.1 of Chapter IV, which governs termination of the contract, reads as under:

"8.1 In the event of repeated instances of unsatisfactory service or any failure at any time on the part of the contractor to comply with the terms and provisions of this contract to the satisfaction of CONCOR (who shall be the sole judge and whose decision shall be final), ***it shall also be open to CONCOR to terminate this contract by giving not less than 30 days' notice in writing to that effect and if the contractor, does not within 30 days after receipt of such***

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notice, makes good his default, CONCOR shall be entitled to terminate the contract as a whole or in part."

14. Further, Clause 9 of Chapter IV provides as under:

> *"9.0 DEBARRING/BANNING OF BUSINESS DEALINGS*
> *In the event of premature termination of contract in terms of provisions of clause 8 above, CONCOR shall also be entitled to Debar the contractor for participation in future tenders of CONCOR or Ban future business dealings with them for a period as deemed fit."*

15. Upon a plain reading of Clause 8.1, it is evident that the Respondent has contractual powers to terminate the contract, either wholly or partially, in the event of repeated unsatisfactory service or noncompliance with contractual obligations. However, such power is subject to the requirement of issuance of not less than 30 days' written notice and an opportunity to the contractor to rectify the alleged defaults within the stipulated period.

16. In the present case, the material placed on record indicates that the Respondent issued several communications to the Petitioner alleging deficiencies in the performance of KYCL operations.

17. In particular, notice dated 17.08.2026 expressly invoked Clause 8.1 of the tender conditions, identified deficiencies in the recording of container movements and proposed partial termination with effect from 17.09.2026. The Petitioner submitted its response to the that notice on 26.08.2026.

18. Thereafter, a meeting between the parties was held on

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28.09.2026. Following that meeting, the Respondent issued the impugned notice dated 13.10.2026, recording that deficiencies and granting the petitioer a further opportunity to improve its performance by 28.10.2026.

19. Thus, *prima facie,* it appears that the Respondent has invoked the contractual mechanism prescribed under Clause 8.1 and afforded the Petitioner opportunities to rectify the alleged deficiencies.

20. The Petitioner's objection that the impugned notice dated 13.10.2026 allowed only 15 days for rectification is a relevant circumstance. However, that notice cannot be examined in isolation from the earlier notice dated 17.08.2026, which expressly invoked Clause 8.1 and proposed partial termination with effect from 17.09.2026, or from the subsequent meeting and correspondence between the parties.

21. The earlier notice itself preceded the proposed date of partial termination by more than 30 days. The impugned notice was issued thereafter, following the Petitioner's response and the meeting between the parties, and granted a further opportunity to improve performance. The Respondent, therefore, did not rely solely on the 15 days period in the impugned notice to initiate the contractual process.

22. On the material presently available, the sequence of communications does not, *prima facie*, establish that the Respondent bypassed the notice and opportunity-to-cure requirements of Clause 8.1.

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23. This court exercising Section 9 jurisdiction cannot conduct an merit based deep inquiry as to whether the Petitioner's explanations were adequately considered and the alleged defaults were satisfactorily rectified. It goes without saying that these matters require deeper examination in appropriate .

24. The legal position concerning contracts which are determinable in nature has been considered by the Hon'ble Supreme Court in ***K.S. Manjunath and Others v. Moorasavirappa @ Muttanna Chennappa Batil and Others***[3], the Hon'ble Supreme Court discussed the distinction between contracts which are terminable at will and those which may be terminated at will and contracts which may be terminated only upon the occurrence of specified events of default.

25. The Hon'ble Supreme Court recognised that a contract which permits termination for cause, , particularly where termination is subject to notice and an opportunity to cure the defaults, is not necessarily a contract determinable in nature within the meaning of Section 14(d) of the Specific Relief Act, 1963.

26. This Court in ***Roadway Solutions India Infra Limited vs NHAI***[4], also considered the law relating to determinable contracts. The relevant observations are reproduced below:

> "This Court finds that although the respondent has been able to highlight judgments where contracts with similar frameworks have

[3] 2025 INSC 1298
[4] 2026:DHC:6435

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been regarded as determinable, however, on the common question of what constitutes a contract in its nature "determinable" under Section 14(d), the Supreme Court's interpretation in ***Manjunath (supra)*** binds all the judgments relied upon by the respondent, wherein the Court has clarified the distinction between contracts which are terminable at will and contracts which can be terminated only upon the occurrence of specified events of default.

30. In ***Manjunath (supra)***, the Supreme Court, while considering the nature of determinability under Section 14(d), **observed that contracts inherently revocable or terminable without cause would fall within the category of determinable contracts. However, contracts which can be terminated only upon breach, after issuance of notice and grant of an opportunity to cure, do not become determinable merely because they contain a termination clause.** The relevant observations of the Apex Court in this regard are reproduced below as the same call for a reading:

> "64. In this backdrop, it would be useful to advert to the classification set out in ***A. Murugan (supra)***, wherein the Madras High Court categorised contracts into five broad classes depending on their ease of determinability. Out of those, the first two, i.e., (i) contracts inherently revocable such as licences and partnerships at will, and (ii) contracts terminable unilaterally on a 'without-cause' basis, were held to be determinable in nature. The remaining classes, namely, (iii) contracts terminable for cause without provision for cure, (iv) contracts terminable for cause with notice and opportunity to cure, and (v) contracts without a termination clause but terminable only for breach of a condition, were all held not determinable in nature.
>
> 65. Further, as laid down in ***DLF Home (supra)***, the question whether a contract is in its nature determinable lies in ascertaining whether the party against whom specific performance is sought has the right to terminate the contract even when the other party is ready and willing to perform. This means if the contract cannot be terminated so long as the other party stands willing to perform, it is not determinable in its nature and would, in equity, be specifically enforceable. The same reasoning was followed in ***Affordable Infrastructure (supra)***, where it was held that a contract terminable for breach cannot merely for that reason be regarded as determinable, otherwise, no contract could ever be specifically enforced."
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> *(Emphasis supplied)*

31. Applying the principle laid down in ***Manjunath (supra)***, the mere inclusion of Clause 23, which provides for termination upon

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> specified events of default and incorporates a cure and representation mechanism, does not render the EPC Contract inherently determinable within the meaning of Section 14(d) of the Specific Relief Act, 1963. Termination is permissible only upon the occurrence of defined causes and after compliance with the prescribed cure and representation process. The decision in ***Manjunath (supra)***, therefore, squarely applies to the contract between the parties".

27. It could be understood that a distinction must be drawn between contracts that can be terminated at will or without cause and contracts that can be terminated only upon the occurrence of specified events of default.

28. Applying the above principles to the present case, Clause 8.1 does not appear to confer an unrestricted right on the Respondent to terminate the contract at will. It contemplates termination on account of repeated unsatisfactory service or failure to comply with contractual obligations, and it prescribes notice and an opportunity to cure.

29. Applying the same to the facts of the matter, this Court is of the *Prima facie* view that Respondent has invoked the contractual mechanism and followed the mechanism as envisaged by the governing contract.

30. The Petitioner disputes the allegations of unsatisfactory performance and has attributes the alleged deficiencies to the Respondent's failure to provide adequate infrastructure and functional equipment.

31. However, determining whether the RDT devices were defective,

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and whether network failures caused the discrepancies in KYCL records, would necessarily involve examination of disputed questions of fact and technical evidence. Even otherwise, nothing placed on record demonstrates *prima facie* case in favour of petitioner.

32. In these circumstances, it is appropriate that such questions are appropriately left to the Arbitral Tribunal and ought not to be conclusively adjudicated in the present proceedings under Section 9 of the Act.

33. The interim relief sought against partial termination would, in substance, require the Respondent to continue engaging the Petitioner for KYCL and inventory management services, notwithstanding the Respondent's recorded dissatisfaction with the Petitioner's performance. Such an order would go beyond preserving the subject matter of the arbitration and would compel continuation of the contractual arrangement at the interim stage.

34. The Petitioner has also not shown, on the material presently available, why damages would be an inadequate remedy if the proposed termination is ultimately found to be wrongful. Any loss arising from an allegedly wrongful discontinuance of the contract may be claimed as monetary compensation in the arbitral proceedings, subject to proof and determination by the Arbitral Tribunal. No sufficient basis has been shown for concluding that such a remedy would be inadequate.

35. Further, the Petitioner has not identified any specific circumstance or material to demonstrate that refusal of the interim protection sought would frustrate the arbitration, and render the arbitral remedy ineffective, or otherwise cause prejudice which could not be

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addressed in the arbitral proceedings. The requirement of urgent protection of the subject matter of the arbitration has, therefore, not been made out.

36. The balance of convenience also does not *prima facie* warrant a direction compelling the continuation of the contractual services.

37. As regards the Petitioner's apprehension of blacklisting or debarment, Clause 9 merely empowers the Respondent to consider such action in the event of premature termination of the contract. The impugned notice dated 13.10.2026 does not itself impose blacklisting or debarment.

38. The settled law governing blacklisting recognises that such action carries serious civil consequences and, therefore, stipulates that the affected party be given adequate notice of the proposed action and a meaningful opportunity to respond before any decision is taken..

39. The Petitioner's apprehension that such action may be taken in the future does not, at this stage, provide an independent ground to restrain the Respondent, from proceedings in accordance with the contractual termination provisions. The possibility of a subsequent decision to blacklist or debar the Petitioner must be distinguished from an order actually imposing such a penalty

40. As of now, no order of blacklisting or debarment has been passed, Additionally, nor has any communication directing forfeiture of security or recovery of any quantified amount on a risk risk-and-cost basis been placed before this Court.

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41. In the absence of any such decision or direction, it is not appropriate to examine the legality of those possible future measures at this stage.

42. Those issues are left open for consideration in accordance with law. In the event that the Respondent subsequently takes any such action, the Petitioner shall be at liberty to avail itself of the remedies available to it in law.

43. It is hoped that better sense and mutual understanding shall prevail upon the parties.

44. In view of the aforesaid, this Court is of the opinion that no case has been made out, at this stage, for grant of an interim injunction restraining the Respondent from proceeding in accordance with the impugned notice dated 13.10.2026.

45. The prayer for interim protection is accordingly declined.

46. It is clarified that the observations made in this order are *prima facie* and are confined to the consideration of the present application for interim relief. They shall not be treated as final findings on the merits of the disputes and shall not prejudice the parties before the Arbitral Tribunal, which shall decide the issues independently on the basis of the material and evidence placed before it.

47. All rights and contentions of the parties are kept open, including the Petitioner's right to challenge any subsequent coercive action in appropriate proceedings.

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48. The present petition is dismissed in the aforesaid terms.

OM PRAKASH SHUKLA, J

OCTOBER 29, 2026/at

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