

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

% **Date of order : 17th April, 2023**

+ **ARB.P. 1339/2022**

M/S ENERGY EFFICIENT SERVICES LIMITED Petitioner

Through: **Mr. V.K. Shukla and Mr. Sugam
Mishra, Advocates**

versus

M/S MERRY GOLD ENTERPRISES Respondent

Through: **None**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

The file is taken up today as 14th April, 2023 was declared as a public holiday on account of Birthday of Dr. B.R. Ambedkar.

I.A. 19738/2022 (Exemption from filing original documents)

Exemption allowed subject to just exceptions.

The application stands disposed of.

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1. The instant petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of petitioner seeking appointment of an Arbitrator to adjudicate the disputes between the

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parties.

2. Learned counsel appearing on behalf of petitioner submitted that the respondent has already been served, however, despite service, he has chosen not to appear before this Court. It is submitted that vide order dated 10.3.2023, this Court observed that despite service of notice, there was no appearance on behalf of the respondent. It is further submitted that when the petitioner tried to serve the notice *dasti* to the respondent, he refused to accept the same.

3. This Court has perused the previous Orders passed by this Court. On 25.11.2022, notice was issued to the Respondent by a Predecessor Bench of this Court. On the next date of hearing, i.e. 12.1.2023, it was noted that as per the office report, service upon the respondent was awaited and fresh notice was issued to the respondent through all permissible modes including *Dasti*.

4. Again on 10.2.2023, when the matter was called for hearing, it was submitted by the learned counsel appearing on behalf of petitioner that the respondent has already been served via WhatsApp and e-mail.

5. On the next date of hearing, i.e. in 10.3.2023, it was observed by this Court that despite service of notice, there was no appearance on behalf of respondent. Accordingly, fresh notice was directed to be issued to the respondent through all permissible modes, including *Dasti*. Vide the same order it was made clear that in case the respondent fails to appear on the next date of hearing, the matter shall be heard *ex-parte*.

6. Despite the said order, the respondent did not appear before this Court. In view of the facts and circumstances, this Court is left with no option but to proceed with the matter *ex-parte* with the assistance of learned counsel for the petitioner.

7. Learned counsel for the petitioner submitted that the petitioner is M/s Energy Efficient Services Limited which is a joint-venture of PSUs of Ministry of Power & Government of India having its registered corporate office at 5th & 6th Floor, NFL Building Core III, Scope Complex, Lodhi Road, New Delhi, 110003. The respondent is M/s Merry Gold Enterprises having its registered office at C-10 210, MIDC Waluj, Aurangabad, Maharashtra, 431136.

8. Learned counsel for the petitioner submitted that the petitioner invited bids for 'Hiring of Agency' for the states of Haryana, Goa, Himachal Pradesh, Chandigarh, and Punjab for its leading project 'UJALA' which is a programme for 'Unnati Jyoti by Affordable LEDs for All'.

9. Learned counsel for the petitioner submitted that the letters of award were issued to State of Haryana, Goa, Himachal Pradesh, Union Territory of Chandigarh, and Punjab along with Contract Prices. The respondent was mandatorily required to submit a summary of stocks received from the petitioner and distribution carried out on weekly basis which was not done by him. It is further submitted that the respondent failed to deposit the entire money collected against the sale and also failed to reconcile the stock which was handed over to him.

10. Learned counsel for the petitioner submitted that the petitioner in terms of contractual stipulations approached the respondent to amicably resolve the disputes and reconcile and verify the claims and counter claims if any to which there was no outcome.

11. Learned counsel for the petitioner submitted that the petitioner in terms of letters of award issued a notice dated 25th November 2020 for appointment of adjudicator and the learned adjudicator after hearing both parties passed an Order in favour of the petitioner directing that a sum of INR 1,29,83,166.26 along with 18% interest should be paid by the respondent as per the terms of letters of award.

12. Learned counsel for the petitioner submitted that the petitioner has invoked the clauses of letters of award calling for Arbitration. The said Clause is enclosed below:

“Arbitration

Arbitration shall be carried out as per Arbitration Act 1996 and its subsequent amendment. The Contract shall be governed by and interpreted in accordance with the laws in force in India. The courts of DELHI shall have exclusive jurisdiction in all matters arising under the contract.”

13. Learned counsel for the petitioner submitted that the petitioner has also sent legal notice dated 26th May 2022 to the respondent demanding the money which was collected and in lieu of the inventory kept in the godown of the respondent, however the same was to no avail.

14. Since all requisites for the appointment of an arbitrator are met in

the instant case, i.e. the arbitrability of the disputes in question, statutory notice under Section 21, in order to resolve the dispute arising under the Agreement, the said disputes and differences arising between the parties are referred to arbitration, by appointing a sole arbitrator. Hence, the following Order:

ORDER

- (i) Justice (Retd.) R S Chauhan is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Agreement between the parties;
 - (ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;
 - (iii) The learned sole arbitrator shall be paid fees as prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;
 - (iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator; and
 - (v) All contentions of the parties are expressly kept open.
15. A copy of the order be forwarded to the learned sole arbitrator on the following address:

Justice (Retd.) R.S. Chauhan,

Former Chief Justice, Uttarakhand High Court

D-31, II Floor, Nizamuddin East, New Delhi - 110013

Mobile No. - +91- 7022891674

E-mail Id – office.jrsc@gmail.com

16. The petition is disposed of in the aforesaid terms along with pending applications, if any.

17. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 17, 2023

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[Click here to check corrigendum, if any](#)