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

% **Date of Order : 6th February, 2023**

\+ ARB.P. 1372/2022

ENERGY EFFICIENCY SERVICES LTD ..... Petitioner

Through: Mr. Rajan K. Singh, Advocate

versus

MS VAP INFOSOLUTIONS ..... Respondent

Through: Mr. Amit Pawan, Mr. Hassan Zubair Waris, Ms. Shivangi and Mr. Aakarsh, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

O R D E R

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 seeking and praying for constitution of an Arbitral Tribunal comprising of an independent Sole Arbitrator in order to adjudicate the disputes between the parties.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner M/s Energy Efficiency Services Ltd. (EESL) is a body corporate and joint venture of 4 (four) Public Sector Undertakings of Ministry of Power, Government of India, namely NTPC Limited, Power-grid Corporation of India Ltd. (POWERGRID), Power Finance Corporation (PFC), and Rural Electrification Corporation (REC), with one of its lead projects being "UJALA" which is a programme for "Unnat Jyoti by affordable LEDs for all". It has been further submitted that EESL was

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established with the intention of directing the market-related actions of the National Mission to Enhance Energy Efficiency (NMEEE), which is one of the eight National Missions under the Prime Minister's National Action Plan on Climate Change. This project of the Indian government is being exclusively undertaken and executed by EESL.

3. It has been submitted on behalf of the petitioner that the respondent, M/s. VAP INFOSOLUTIONS, is a private limited company incorporated under the Companies Act, 1956, with its registered office located at Lucknow-3/315 Vishwas Khand, Gomti Nagar, Lucknow-226010, that provides a vast array of services, including Solid Waste Management, Solar Energy Procurement, Skill Development, Human Resource Management, and IT enabled services.

4. It has been submitted on behalf of the petitioner that the genesis of the dispute between the parties lies back when the petitioner company solicited bids for "Hiring of agency for large scale distribution, storage, and inventory management of LED bulbs/BEE 5 Star Ceiling fans/ Energy Efficient Tube Lights and data base preparation etc., replacement of defective LED bulbs as per scope of work for DELP (Domestic Efficient Light Programme) for the state of Haryana, Madhya Pradesh, Delhi, Uttar Pradesh, Bihar, and Pan India."

5. It has been submitted on behalf of the petitioner that the respondent participated in the aforementioned tenders and submitted a bid after meeting the qualifying conditions outlined in the solicitation notice. The respondent was declared the winning bidder. Consequently, the respondent received LOAs for contract work for the states of Haryana, Madhya Pradesh, Delhi, Uttar Pradesh, Bihar, and Pan India.

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6. It has been submitted on behalf of the petitioner that in accordance with the aforementioned LOAs and subsequent contract documents signed between the parties viz. the contract agreement, GCC and the Special Conditions of Contract ("SCC"), the respondent was contractually obligated to carry out large-scale Distribution, Storage, and Inventory Management of Energy Efficient appliances, namely LED bulbs, BEE 5 Star Ceiling fans and Energy Efficient Tube Lights & Data Base Preparation etc. replacement and etc. as per the scope of work within the stipulated time frame. The aforementioned deposits were to be made every other day, and the respondent was expected to produce periodic deposit slips. It is further submitted that the respondent was compelled to issue invoices with proof of depositing funds earned through such distribution into the petitioner's bank account.

7. It has been submitted on behalf of the petitioner that, in accordance with the management information system, the respondent was supposed to produce a weekly reconciliation of the stocks received from the petitioner, however, the respondent failed to do so.

8. It has been submitted on behalf of the petitioner that the respondent failed miserably to deposit the total amount of money acquired from the sale and failed to reconcile the stocks it was given and dispersed. The petitioner, through e-mails and other communications, made many requests to the respondent, which it did not comply with, to deposit the outstanding amount and transfer the balance stocks that were at the respondent's godowns/designated places.

9. It has been submitted on behalf of the petitioner that during the subsistence of the contract as well as after the completion of the partial

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scope of work carried out by the respondent, the petitioner, in accordance with contractual specifications, attempted to resolve problems peacefully, reconcile and verify claims and counterclaims, if any, with no result. The respondent neglected to reply to the petitioner's request and provided explanations that were not supported by the facts or contractual responsibilities.

10. It has been submitted on behalf of the petitioner that in absence of any response from the respondent to adjudicate the dispute amicably with respect to dues and stock reconciliation, the petitioner herein was constrained to invoke notice of adjudication dated 25th November, 2020 to resolve the disputes/claims and counter-claims of the parties.

11. It has been submitted on behalf of the petitioner that the COVID-19 pandemic had introduced a great deal of uncertainty into all aspects of the country's operations, including government, business, and educational institutions, as well as the legal system. Due to the COVID -19 pandemic, the Hon'ble Supreme Court addressed the matter of extending the statute of limitations *suo moto* in an order dated 23rd March, 2020, and extended the statute of limitations due to the COVID -19 pandemic and the problems petitioners encountered until 28th February, 2022. In light of the foregoing, and after considering the current pandemic circumstances and the challenges experienced by the parties, the Ld. Adjudicator, due to the COVID- 19 pandemic, had slowed the speed of the proceedings by allowing the parties enough time to submit their case. However, the respondent never collaborated with the Ld. Adjudicator during the said proceeding.

12. It has been submitted on behalf of the petitioner that upon adjudicating upon the claims of the petitioner, the Ld. Adjudicator vide its

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award dated 7th April, 2022 awarded a sum of Rs. 2,32,51,783/- (Rupees Two Crore Thirty Two Lakh Fifty One Thousand Seven Hundred and Eighty Three Only), with 18% interest per annum in terms of LOA and Rs. 3,63,48,400/- (Rupees Three Crore Sixty Three Lakh Forty Eight Thousand and Four Hundred Only) being the value of the stocks to the petitioner.

13. It has been submitted on behalf of the petitioner that the petitioner notified the respondent of the aforementioned award dated 7th April, 2022 and demanded the settlement of accounts in accordance with the conditions of the award. However, the respondent did not react to the petitioner's message and neither paid the bills.

14. Learned counsel for the petitioner submits that being aggrieved by the conduct of the respondent, the petitioner was constrained to invoke arbitration clauses, that are clauses 6, 7, 9 & 12 as stipulated under the LOAs vide notice dated 27th May, 2022. It is further submitted that the aforementioned notification was returned as "unclaimed" since the respondent declined to accept the notification issued by India Post. On 3rd June, 2022, the petitioner's counsel sent the aforesaid notification dated 27th May, 2022 to the respondent's email address that was duly received.

15. It has been submitted on behalf of the petitioner that the respondent answered for the first time vide letter dated 24th June, 2022, contesting the decision and the sum determined by the Ld. Adjudicator. In addition, the respondent denied any dues pending towards the petitioner, as per the contractual stipulations. Furthermore, the respondent also refused to nominate its preferred arbitrator and submit to the arbitration.

16. Learned counsel for the respondent has denied the averments made in the instant petition. However, has fairly conceded that the dispute in

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question is arbitral in nature.

17. Heard the learned counsel for the parties and perused the record.

18. As agreed on behalf of the parties, it is evident that the parties intend this Court to refer the dispute to arbitration, by appointing a Sole Arbitrator. In view of the request made by the parties, to resolve the dispute arising under the LOAs, the said disagreements arising between the parties are referred to arbitration, by appointing a Sole Arbitrator. Hence, the following Order:

ORDER

(i) Justice Vineet Saran, Former Judge, Supreme Court of India is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the aforementioned LOAs;

(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 Fourth Schedule of the Arbitration and Conciliation Act, 1996;

(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;

(v) All contentions of the parties are expressly kept open;

19. A copy of the order be forwarded to the learned sole arbitrator on the following address:

Justice Vineet Saran, Former Judge, Supreme Court of India
65, Lodhi Estate

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

CHANDRA DHARI SINGH, J

FEBRUARY 6, 2023
Dy/ug

Click here to check corrigendum, if any

HIGH COURT OF DELHI
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