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

+ **ARB.P. 457/2023, I.A. 22762/2023**

M/S LIVFAST BATTERIES PRIVATE LIMITED Petitioner
Through: Mr.Abhishek Dev, Adv.

versus

M/S SHREE DURGA ENTERPRISES & ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
21.02.2024

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The present petition has been filed under Section **11** of the Arbitration and Conciliation Act, 1996 (herein referred to as “*the A&C Act*”) seeking the appointment of an Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes *inter se* the parties.

The parties had entered into an authorised dealership/distributorship agreement dated 05.06.2018. Clause 21 of the agreement provides the arbitration clause. Learned counsel for petitioner submitted that in terms of that clause, they have already made an attempt for an amicable settlement by sending the notice dated 17.11.2022. However, the respondents vide their reply dated 05.12.2022 have denied their liability. In the reply, the respondents have also stated they are not agreeable to the nomination of an arbitrator of the choice of the petitioner.

Notice has already been issued to the respondent. As per the service report, the respondents have duly been served through email. The registered



A/D has also been sent to the address given in the petition. The registered A/D has been sent to the same address on which the notice dated 17.11.2022 was sent. However, the respondents have chosen not to appear.

Section 3 of the A&C Act provides that any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence, or mailing address. The petitioner has also filed the affidavit of service stating there on oath that the respondents have duly been served through speed post and WhatsApp. The tracking report of the speed post has also been filed.

The scope of jurisdiction to be exercised by the court at the stage of appointing an arbitrator is very limited. The court has to only see whether there is an arbitrable dispute arising out of a valid agreement that contains an arbitration clause. In the present case, there is an agreement between the parties which has an arbitration clause. The notice dated 17.11.2022 and reply dated 05.12.2022 indicates that there is an arbitrable dispute. The arbitration has duly been invoked. The respondents have chosen not to appear. The claim amount is stated to be around Rs.25 lakhs.

In the facts and circumstances of the case, the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) Mr. D.S. Mehandru, Advocate (Mobile No.9871614441) is appointed as an Arbitrator to adjudicate the disputes between the parties.
- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned



Arbitrator shall be in terms of fee rules of the DIAC schedule or as the parties may agree.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned arbitrator within two weeks from today.

The petition along with pending application is disposed of in the above terms.

DINESH KUMAR SHARMA, J

FEBRUARY 21, 2024
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