



2024:DHC:5567



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 508/2024****CLN ENERGY PVT. LTD. (FORMERLY  
JLNPHENIX ENERGY PVT. LTD.)**

.....Petitioner

Through: Ms. Ekta Bharati and Mr.  
Roshan Sonthalia, Advs.  
versus**E ASHWA AUTOMOTIVE PRIVATE LIMITED ..Respondent**  
Through: None**CORAM:****HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT (ORAL)**

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**26.07.2024****ARB.P. 508/2024**

1. The petitioner, by this petition under Section 11(6)<sup>1</sup> of the Arbitration and Conciliation Act, 1996<sup>2</sup> requests the Court to appoint an arbitrator to arbitrate on the disputes with the respondent. The dispute arises in the context of a Master Sale Purchase Agreement<sup>3</sup> dated 1 May 2022, executed between the petitioner and the respondent. The MSPA contains the following arbitration clause, whereby the disputes relating to the MSPA are to be resolved by

<sup>1</sup> (6) Where, under an appointment procedure agreed upon by the parties—  
(a) a party fails to act as required under that procedure; or  
(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or  
(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,  
the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

<sup>2</sup> “the 1996 Act” hereinafter

<sup>3</sup> “MSPA” hereinafter

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HARI SHANKAR  
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arbitration:

“6.3 ARBITRATION

Any dispute arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this Agreement or the validity or the breach thereof shall be settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 as amended from time to time and the award made in pursuance thereof shall be binding on the parties. The venue and seat of arbitration will be Delhi.”

2. As disputes arose between the parties, relating to an amount of ₹ 6.37 Lakhs which, according to the petitioner, remains to be paid by the respondent, the petitioner addressed a notice to the respondent under Section 21 of the 1996 Act, seeking to invoke arbitration and suggesting the name of an Advocate of this Court as the arbitrator.
3. The respondent did not choose to reply.
4. The petitioner has, therefore, approached this Court by means of the present petition under Section 11(6) of the 1996 Act, seeking appointment of an arbitrator by this Court.
5. On the last date of hearing, Mr. Rajat K. Mittal, learned Counsel had accepted the notice for the respondent and sought time to file reply, which was granted. No reply has been filed.
6. Today, though the matter has been called out twice, there is no appearance on behalf of the respondent at either call.
7. The Supreme Court has, in its recent decision in *SBI General*

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*Insurance Co Ltd v. Krish Spinning*<sup>4</sup>, narrowed down the scope of inquiry by the Section 11(6) Court, underscoring that, in the spirit of arbitration, save and except for the question of whether an arbitration exists between the parties, most aspects should be left for decision by the learned Arbitral Tribunal.

8. Ms. Ekta Bharati, learned Counsel for the petitioner has, as already noted, pointed out the arbitration clause between the parties. The disputes, *prima facie*, are arbitrable.

9. Accordingly, this Court appoints Mr. Abhay Sharan Singh, Advocate (Cell: 7982841287), as the arbitrator to arbitrate on the disputes between the parties.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned arbitrator shall be entitled to fees as per the schedule of fees maintained by the DIAC.

11. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

12. The petition stands allowed in the aforesaid terms.

**C.HARI SHANKAR, J**

**JULY 26, 2024**

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