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

+ **ARB.P. 537/2024**

**M/S. LIVGUARD ENERGY TECHNOLOGIES PRIVATE
LIMITED**

.....Petitioner

Through: Mr. Amulya Dhingra and Mr.
Abhishek Dev, Advocates.

versus

M/S ARIHANT ENTERPRISES

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

01.08.2024

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1. This petition, under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], has been filed by the petitioner, seeking appointment of an arbitrator to adjudicate disputes between the parties under an Agreement dated 03.11.2018, entitled “*AUTHORISED DEALERSHIP/DISTRIBUTORSHIP AGREEMENT*” [“the Agreement”].

2. The Agreement contains a dispute resolution clause [Clause 21], which provides for resolution of disputes by arbitration, by a sole Arbitrator to be appointed by the petitioner. Delhi has been designated as the place of arbitration.

3. Disputes having arisen between the parties, the petitioner invoked arbitration by a communication dated 11.12.2023, which did not elicit a response.

4. Although the Agreement provides for the arbitrator to be appointed

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by the petitioner, it has approached this Court in view of the settled legal position that unilateral appointment of an arbitrator is impermissible.

5. Notice was issued on 30.04.2024, and the office report shows that notice has been served upon the respondent by ordinary service, at both the addresses mentioned in the memo of parties, by speed post at the first address and by e-mail.

6. Learned counsel for the petitioner has also filed an affidavit of service, which affirms that speed post service was effected at the respondent's address on 14.05.2024 and 09.05.2024 respectively. It has also been stated in the affidavit of service that learned counsel has served the respondent by e-mail and WhatsApp. The respondent is nonetheless unrepresented, even on the second call.

7. The Court's enquiry, under Section 11 of the Act, is limited to *prima facie* satisfaction, as to the existence of the arbitration clause. Having regard to the terms of the Agreement placed on record by the petitioner, I am *prima-facie* satisfied that the parties were bound by an arbitration clause, which has been duly invoked by the petitioner. The respondent has also not appeared to controvert these submissions. The appropriate course, therefore, is to refer the parties to arbitration, leaving all defences available to the respondent, including on maintainability and merits of the claims, for adjudication by the learned Arbitrator.

8. For the aforesaid reasons, the petition is allowed, and the disputes between the parties under the Agreement dated 03.11.2018 are referred to arbitration of Hon'ble Ms. Justice Asha Menon, former Judge of this Court [Tel: 9910384664]. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road,



New Delhi-110503 [“DIAC”], and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.

9. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

10. As the respondent has not entered appearance in these proceedings, it is clarified that it must be duly served in the arbitration proceedings, in accordance with the DIAC Rules.

11. All questions of maintainability and merits are left open for adjudication by the learned Arbitrator.

12. The petition stands disposed of with the aforesaid directions.

PRATEEK JALAN, J

AUGUST 1, 2024
SS/