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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 555/2024

**M/S. SMARTERING INFRATECH PVT. LTD. (UNDERGOING
CIRP, THROUGH RESOLUTION PROFESSIONAL)**

.....Petitioner

Through: Mr. Siddhant Juyal, Adv.

versus

M/S. ENERGY EFFICIENCY SERVICES LTD.

.....Respondent

Through: Mr. Samdarshi Sanjay, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

23.10.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator for adjudication of disputes between the parties.
2. The petitioner is currently undergoing insolvency proceedings pursuant to an Order dated 29.09.2022 passed by NCLT, New Delhi. *Vide* Order dated 22.12.2022 passed by NCLT, New Delhi, Resolution Professional was appointed. The present petition is being filed through the Resolution Professional.
3. The facts are that the respondent issued a Tender on 08.03.2018 and the petitioner submitted a joint bid which was accepted *vide* Letter of Award dated 04.12.2018, which was subsequently amended on 31.01.2020.
4. The arbitration clause is Clause 12 of the Letter of Award dated 04.12.2018 which reads as under:-



“12. Arbitration : Arbitration shall be carried out as per the Arbitration Act, 1996 and its subsequent amendment(s). 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.”

5. Since there were disputes between the parties, the petitioner invoked the Arbitration *vide* legal notice dated 24.05.2022. Hence the present petition.

6. This Court *vide* Order dated 02.05.2024 issued notice to the respondent.

7. The reply has been filed by the respondent.

8. Mr. Sanjay, learned counsel for the respondent states that he has no objection to the appointment of an Arbitrator as long as all the objections contained in the reply are left open to be adjudicated by the learned Arbitrator.

9. Mr. Juyal, leaned counsel for the petitioner states that there is no liquidation order passed by the NCLT. His statement is taken on record.

10. For the said reasons, the petition is allowed and the following directions are issued:-

- i) Justice Rajiv Shakdher (Retd. Chief Justice of High Court of Himachal Pradesh) (Mob. No. 9717495004) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) 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’).



- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
 - 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/counter-claims and merits of the dispute of either of the parties including the objections raised in the reply by the respondent, are left open for adjudication by the learned Sole arbitrator.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.
11. The present petition is disposed of in the aforesaid terms.

OCTOBER 23, 2024/sp

JASMEET SINGH, J

Click here to check corrigendum, if any