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

+ ARB.P. 1042/2024

M/S ENERGY EFFICIENCY SERVICES LIMITED (EESL)

.....Petitioner

Through: Mr. Vishal Arora, Mr. Sudhanshu
Kumar Chaudhary, Advs.

versus

PUBLIC WORKS DEPARTMENT GOVERNMENT OF
MAHARASHTRA

.....Respondent

Through: Ms. Yamini Singh, Mr. Kartikey,
Advs.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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03.10.2024

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter *the A&C Act*) seeks appointment of the Sole Arbitrator to adjudicate the disputes between the parties. The dispute between the parties have arisen in the context of a Memorandum of Understanding dated 20.05.2017 executed between the parties, followed by an Energy Performance Agreement dated 24.10.2017 for the implementation of Energy Efficiency Measures at Non Residential Government buildings maintained by the Public Works Department Maharashtra on deemed energy savings, based on ESCO model with 100% financing by Energy Efficiency Services Ltd. (EESL) (hereinafter referred to as '*Agreement*').
2. It is submitted that as per the contractual requirements, EESL has carried out the project implementation at 2116 nos. of non-residential buildings in terms of the aforesaid agreement.
3. Disputes have arisen between the parties as regards the payment



entitlement of the petitioner under the aforesaid agreement. Extensive correspondence has been exchanged between the parties in this regard.

4. *Vide* letter dated 17.04.2023, the petitioner requested the respondent for allocation of funds of Rs. 71,88,99,995/- (Rupees Seventy one crore eighty eight lacs ninety nine thousand nine hundred ninety five only) and also requested for issuing direction for releasing the payment of Rs. 68,90,27,285/- (Rupees sixty eight crores ninety lacs twenty seven thousand two hundred eighty five only) against submitted invoices.

5. Attention is drawn on behalf of the petitioner to the relevant terms of the agreement which deals with the timelines for payment of invoices and also with regard to the provision of interest on unpaid invoices.

6. Disputes having arisen between the parties as regards alleged non-payment of outstanding dues to the petitioner, a notice for appointment of Arbitrator was issued by the petitioner on 19.04.2024 in which it was, *inter alia*, stated as under:-

“Please note that in terms of Section 16 of the Agreement signed between EESL & PWD Maharashtra dated 24.10.2017, EESL proposes the name of Hon’ble Justice Ms. Reva Khetarpal (Retd.), Former Justice High Court of Delhi at New Delhi to act as a Sole Arbitrator EESL is open to considering any other suggestions if proposed within 7 days from PWD Maharashtra.”

7. No response thereto is stated to have been sent by the respondent to the petitioner. The contract between the parties incorporates an arbitration agreement which is in the following terms:-

“SECTION 16. Arbitration

16.1 In the event of default by PWD, Maharashtra and/or EESL, or for resolution of any related dispute, an arbitration panel shall be set-up. This panel shall consist of a sole arbitrator appointed with the mutual consent of the Parties. The Arbitration shall conduct in English at Delhi/Mumbai, Maharashtra.”



8. Learned counsel for the respondent does not dispute the existence of the arbitration agreement. He accedes that an independent sole arbitrator be appointed by this Court to adjudicate the disputes between the parties.

9. Considering the aforesaid, Mr. Justice (Retd.) Anil R. Dave, Former Judge, Supreme Court of India (Mob. No.:9560309393) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

10. The learned Sole Arbitrator may proceed with the arbitration subject to furnishing to the parties the requisite disclosures, as required under Section 12 of the A&C Act.

11. The learned Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

12. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.

13. Respective counsel for the parties agree that although the seat of the arbitration shall be Delhi, the learned Arbitrator may also fix Mumbai as the venue of arbitration, to accommodate any request that may be made by the respondent in this regard. Needless to say, the same shall be subject to the convenience and directions of the learned Sole Arbitrator.

14. The petition stands disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 3, 2024/UK