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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1357/2022

LIVGUARD ENERGY TECHNOLOGIES PRIVATE LIMITED

..... Petitioner

Through: Ms. Amulya Dhingra, Mr. Abhishek
Dev, Advs. along with Mr. Abhishek
Vats, AR.

Versus

KANNAN AUTO ELECTRICAL WORKS & ANR. Respondent

Through: Mr. Pawan Prakash Pathak and Mr.
Sumit Ranjan, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

26.04.2024

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1. This is a petition seeking appointment of a Sole Arbitrator.
2. The arbitration clause is contained in the agreement dated 26.07.2017 and reads as under:-

“21. DISPUTE RESOLUTION

21.1 Any and all disputes, controversies and conflicts (“Disputes”) arising out of this Agreement between the Parties or arising out of or relating to or in connection with this Agreement and the performance or non-performance of the rights and obligations set forth herein or the breach, termination or invalidity thereof shall be referred to the business head of each party to be settled jointly and amicably within 30 days after written notice of such Dispute has been given by one party to the other party.

21.2 Falling an amicable settlement of any Dispute pursuant to the above within the specified 30 days period, such Dispute



arising out of or relating to this Agreement, shall be settled by arbitration in accordance with the Arbitration and Conciliation Act 1996 or any statutory amendment thereof. The place of arbitration shall be Delhi, India and the language used in the arbitral proceedings shall be English.

21.3 The arbitral tribunal shall consist of one arbitrator to be nominated and appointed by the Company to which the Authorized Dealer / Distributor hereby agrees. The authority of the Company to appoint the arbitrator and the arbitrator so appointed shall not be objected to or challenged by the Authorized Dealer / Distributor in any manner whatsoever.

21.4 The arbitral award and decision by the arbitral tribunal shall be in writing and shall be final, binding and incontestable and shall be enforceable in any court of competent jurisdiction.

21.5 Pending the submission to arbitration and thereafter until the tribunal renders its award or decision, the Parties shall, except in the event of termination of this Agreement or in the event that injunctive or other equitable relief is granted under this Clause continue to perform their obligations under this Agreement.”

3. The respondent No.1 is a proprietorship firm under the proprietorship of the respondent No.2.
4. The respondent No.1 through the respondent No.2 was appointed as an authorised dealer/distributor of the petitioner's products including batteries and invertors on non-exclusive terms.
5. Since there were disputes between the parties, the petitioner invoked arbitration vide legal notice dated 12.07.2022, which was duly replied to.



6. Notice was issued in the petition and the respondents were directed to file a reply. The respondents have not filed any reply.
7. Mr. Pathak, learned counsel for the respondents states that the rights of the respondents to raise all objections and counter claims may be kept open and an arbitrator may be appointed leaving all claims, counter claims and objections of the respondents open.
8. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-
 - i) Ms. Sangeeta Sondhi, Adv. (Mob. No. 9810243382) 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'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
 - iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - iv) 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.
 - v) The parties shall approach the learned Arbitrator within two weeks from today.



9. The petition is allowed and disposed of in the aforesaid terms.

APRIL 26, 2024 / ng/(MS)

JASMEET SINGH, J

Click here to check corrigendum, if any