



2024:DHC:8637



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 07.11.2024**
+ **ARB.P. 1610/2024**

M/S LIVGUARD ENERGY
TECHNOLOGIES PRIVATE LIMITED

.....Petitioner

Through: Mr. Diwakar Singh, Mr. Chetan
Rathore, Advs.

versus

M/S SRI VELAVAN BATTERY
SERVICE THROUGH ITS PROPRIETOR/
AUTHORIZED SIGNATORY MR NATARAJAN SRINIVASAN

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL.)

1. The present petition filed under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of an Authorized Dealership/Distributorship Agreement (hereinafter referred as "the Agreement") dated 06.07.2018 executed between the petitioner and respondent, in terms of which respondent was engaged as an authorized dealer/distributor for the products, i.e. inverter, inverter batteries, automotive/motorcycle batteries and other related products and services of the petitioner.
3. A cheque dated 30.05.2023 for Rs. 14,03,908/-, was issued by



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respondent towards part discharge of its liabilities. However, the same was dishonoured upon its presentation.

4. Dispute/s have arisen between the parties on account of alleged default on the part of the respondent in discharging its liability under the agreement.

5. The arbitration clause in the Agreement between the parties, is in the following terms : -

“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 Failing 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.”

6. Disputes having arisen between the parties, a statutory notice dated



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28.06.2023 under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred as “NI Act”) was issued by the petitioner calling upon the respondent to remit the outstanding payment within 15 days of the receiving of aforesaid notice. However, since the respondent failed to clear the requisite payments, a criminal complaint case bearing no. NACT 86552 of 2023 under Section 138 of NI Act was filed before the concerned Court. The same is pending adjudication. However, the same is not an impediment to seeking arbitration. It has been held by a Co-ordinate bench of this Court in ***Newton Engineering and Chemicals Limited and Ors. v. UEM India Pvt. Ltd.*** 2023:DHC:8476, relying upon ***Sri Krishna Agencies v. State of A.P. & Anr.***, (2009) 1 SCC 69 as under :-

“6. The relevant part of the Supreme Court judgment in *Sri Krishna Agencies (supra)* is set out below:-

“4. Mr Adhyaru, learned Senior Counsel appearing in support of the appeal, submitted that the High Court has apparently confused the issue relating to the continuance of the arbitration proceedings as also the criminal proceedings, since when the cheques were dishonoured, a separate liability arose in terms of Section 138 of the Act, whereas the arbitration proceedings were under the agreement signed between the parties. It was submitted by him that the commencement and the continuance of the arbitration proceedings could in no way affect the criminal proceedings taken separately.

5. In support of his submissions, Mr Adhyaru referred to the decision of this Court in *Trisuns Chemical Industry v. Rajesh Agarwal* where the same question arose in relation to arbitration proceedings taken during the continuance of a complaint filed under Sections 415 and 420 of the Code of Criminal Procedure. In the said decision, it was held that merely because arbitration proceedings have been undertaken, the criminal proceedings could not be thwarted. 6. On behalf of Respondent 2, the submissions which had been urged before the High Court were reiterated which however appear to be unacceptable having regard to the decision cited by Mr Adhyaru.

7. We are also of the view that there can be no bar to the simultaneous continuance of a criminal proceeding and a civil



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proceeding if the two arise from separate causes of action. The decision in Trisuns Chemical Industry case appears to squarely cover this case as well.”

7. It is clear from the above that the arbitration proceedings as well as the proceedings under Section 138 of the NI Act arise from separate causes of action and the pendency of the arbitration proceedings would not affect the proceedings under Section 138 of the NI Act. There is no merit in the contention of the petitioners that the complaint under Section 138 of the NI Act is not maintainable in view of the ongoing arbitration proceedings between the parties. Additionally, whether the aforesaid cheque was given as a security or not is something which can only be proved as a matter of defence during trial.”

7. The petitioner invoked the arbitration clause *vide* communication dated 14.05.2024. However, the respondent failed to respond thereto. The petitioner has placed on record the relevant postal receipt to show that the said communication was delivered to the respondent.

8. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

9. In the present proceedings, notice was issued by the Court on 09.10.2024 with a liberty to the respondent to file reply, if any, before the next date of hearing. The petitioner has taken the requisite steps to serve the respondent at its known address. However, the communications sent to the said address *via* speed post was returned with the notations, “Item returned unclaimed”.

10. The respondent is also stated to have been served *via* email at srivelavan.007@gmail.com and *via* whatsapp at +919994533280.

11. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee’s last known place of business or mailing address by any means which provides a record of



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the attempt to deliver it. In the present case, the petitioner has made numerous attempts to effect service on the respondent and has thereby discharged its onus to effect service on the respondent.

12. Since the existence of the arbitration clause is evident from a perusal of the Agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, and as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Ltd.* (2017) 8 SCC 377, *Bharat Broadband Network Limited v. United Telecoms Limited* 2019 SCC OnLine SC 547 and '*Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*', 2023 SCC OnLine SC 1666.

13. Accordingly, Mr. Dhruv Pande, Advocate, (Mobile: +91 9910165010) appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. The respondent shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

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

16. 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.

17. Parties shall share the arbitrator's fee and arbitral cost, equally.



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18. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.
19. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.
20. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 7, 2024/sl