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

+ **ARB.P. 1358/2022**

LIVGUARD ENERGY TECHNOLOGIES PRIVATE LIMITED

.....Petitioner

Through: Mr. Diwakar Singh and Mr. Chetan
Rathor, Advs.

versus

DURGA CORPORATION & ANR.

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

03.03.2025

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('**A&C Act**'), seeking appointment of the Sole Arbitrator for the adjudication of disputes between the parties arising out of the '*Distributorship Agreement*' dated 26th December 2018, executed between the parties.

2. Pursuant to the notice issued, respondent no.2 who is the proprietor of M/S Durga Corporation (*respondent no.1*) appeared through VC on 11th November 2024, and confirmed that he will be participating in the mediation proceedings.

3. Mediation report dated 28th January 2025, has been filed stating that the mediation ended as '*not settled*'.

4. No one appears on behalf of the respondents.



5. However, in view of the arbitration *clause 21* as part of the agreement which provides for adjudication of disputes for arbitration and place of arbitration being Delhi, the Court does not seek any impediment in appointing the Arbitrator. The arbitration clause 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.

6. Principal amount which is claimed by petitioner is Rs. 33,87,000/- on account of goods supplied by the petitioner to the respondents.



7. The Supreme Court in *Fugro Survey (India) (P) Ltd. v. Ramunia International Services Ltd.* (2012) 10 SCC 752 and *Suprema Inc. v. 4G Identity Solutions (P) Ltd.* (2015) 13 SCC 122, and this Court in, *Energy Efficient Services Ltd. v. Merry Gold Enterprises* 2023 SCC OnLine Del 2365 and *Aditya Birla Finance Ltd. v. Anjali Nag* 2024 SCC OnLine Del 2568, in similar situations, where the respondents did not appear before the Courts despite issuance of notice and service being affected upon them, proceeded *ex-parte* against such respondents and appointed the arbitrator.

8. Upon a conspectus of the averments contained in the petition and the submissions made, this Court is of the opinion that there is a valid and subsisting arbitration agreement between the parties, within the territorial jurisdiction of this Court, the disputes stated to have arisen between the parties do not appear *ex facie* to be non-arbitrable.

9. Considering the aforesaid, the petition is allowed. The following directions are issued:

- i) *Ms. Neeru Vaid, Advocate* (Mob. No. 9582619834) 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 ('**DIAC**'). The remuneration of the Arbitrator shall be as per DIAC rules.
- iii) The Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the A&C Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the parties, including the arbitrability/maintainability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute by



either of the parties are left open for adjudication by the Sole Arbitrator.

v) The parties shall approach the Sole Arbitrator within two weeks from today.

10. The petition is disposed of.

11. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 3, 2025/RK/tk