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

+ **ARB.P. 1487/2024**

ZAZZ TECHNOLOGY CONNECT PVT LTDPetitioner

Through: Mr. Karanveer and Mr. Kumar
Abhishek, Advocates.

versus

AUXILIUM SMART CARE PVT LTDRespondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **16.07.2025**

1. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. Notice was issued to the Respondent on 24.09.2024, returnable on 13.11.2024, on which date Mr. Dubey, Advocate had entered appearance on behalf of the Respondent and both counsels submitted that parties could attempt to settle the disputes amicably and be referred to Delhi High Court Mediation and Conciliation Centre. Hence, parties were referred for mediation and the matter was listed for 04.03.2025, on which date it was adjourned to 08.05.2025 since mediation was ongoing. On 08.05.2025, the matter was called twice but there was no appearance on behalf of the Respondent even on the second call. In the interest of justice, adverse orders were deferred, making it clear that if the Respondent remained unrepresented on 16.07.2025, the date fixed, Court will proceed in its absence.
3. Even today, the matter has been called twice. None appeared for the



Respondent on the first call and none appears on the second call. It appears that the Respondent is not interested in contesting the present petition and is accordingly set *ex parte*.

4. The pleaded case of the Petitioner is that Petitioner is a Private Limited Company incorporated under the Companies Act, 2013 and is engaged in the business of sale and distribution of electronic goods, including speakers, Bluetooth devices, headphones, mobile chargers etc., under the brand/trademark 'GIZMORE' and 'TYOON'. Looking at the reputation of the Petitioner, Respondent through its Directors and Authorized Signatories approached the Petitioner to be an authorized service provider to provide after-sales services to the end customers and end users of the Petitioner. Based on the representations and assurances of the Respondent, Petitioner appointed the Respondent as its authorized service provider on non-exclusive basis and an 'After-Sale Services Agreement' ('ASSA') was executed between the parties on 15.08.2019 in this respect.

5. It is stated in the petition that as per the arrangement between the parties, Petitioner supplied stock of its products, spare parts and accessories to the Respondent against the repair or replacement of the stocks, which were under warranty from time to time, as per requirement to provide after-sales services to the end customers/end users of the Petitioner. The supplies were made on credit basis and accordingly several invoices were raised by the Petitioner. Respondent maintained a running account in which entries of supplied products, spare parts and accessories were duly made. As per Clause 3(d) of ASSA, Respondent was obliged to provide monthly report of the services carried out for the customers and as per Clause 3(m), all accounts had to be settled on monthly basis. Clause 7(c) of ASSA



obligated the Respondent to ensure that all spare parts invoiced by the Petitioner did not cross 120 days and in absence of any requirement, non-moving parts were to be returned to the Petitioner.

6. Petitioner avers that Respondent breached the terms of ASSA in not only failing to return the parts, which were not used and retained huge stocks illegally but also caused financial loss to the Petitioner by withholding a sum of Rs. 1,03,25,668/-, legally and lawfully due to the Petitioner. Petitioner sent a demand notice dated 30.11.2022 to clear the outstandings, after which there was a round of discussions and meetings between the parties, but to no avail. Realising that Respondent would not fulfil its obligations and pay the outstanding amount, Petitioner invoked Arbitration Clause No. 24 in the ASSA and sent invocation notice dated 11.08.2023 on 14.08.2023 to the Respondent, proposing the name of an independent Sole Arbitrator. However, on failure of the Respondent to appoint an independent Arbitrator or agree to the proposed name of the Petitioner within 30 days from receipt of the notice, Petitioner filed the present petition.

7. As noted above, Respondent has chosen not to contest the present petition. The ASSA contains an arbitration clause envisaging reference of any dispute, claim or controversy arising out of the said Agreement to be referred to arbitration for adjudication of the disputes. For ready reference, Clause 24 is extracted hereunder:-

“24. ARBITRATION

a) The parties will attempt to settle any dispute, claim or controversy arising out of this agreement through consultation and negotiation in good faith and in a spirit of mutual co-operation. If those attempts fail then either party can refer the disputes, issues or claims arising out of or relating to this agreement for arbitration by a sole arbitrator who shall be



appointed by COMPANY. This shall be done within a period of 45 days from the date of dispute.

The arbitration proceedings shall be held in New Delhi, conducted in English and shall be subject to provisions of the Indian Arbitration and Conciliation Act, 1996.”

8. The arbitration clause is undisputed and therefore in light of the judgment of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***, Court finds no impediment in appointment of a Sole Arbitrator as envisaged in Clause 24.

9. Accordingly, Mr. Rajiv Jain, Advocate (Mobile No. 9599221734), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre (‘DIAC’) and as per its Rules. Fee of the Arbitrator shall be as per fee schedule of DIAC (Administrative Cost & Arbitrators’ Fees) Rules 2018.

10. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

11. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.

12. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

JULY 16, 2025

S.Sharma