



\$~ 1

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

+ **ARB.P. 1810/2024**

**M/S LIVFAST BATTERIES PRIVATE LIMITED .....Petitioner**

**Through: Mr. Divyendu Sorayan, Advocate**

**versus**

**M/S SAI VENKATESHWARA ENTERPRISES THROUGH ITS  
PROPRIETOR/AUTHORIZED SIGNATORY MR. ATTHAPURAM  
AKSHAY REDDY .....Respondent**

**Through: None**

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**ORDER**

**% 07.04.2025**

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act of 1996') seeking appointment of a Arbitral tribunal comprising of a Sole Arbitrator, to adjudicate the disputes between the parties.
2. It is stated in the petition that disputes between the parties arising out of Distributorship/Dealership Agreement dated 22.01.2021. It is stated that the said agreement contains an Arbitration Agreement at Clause 21, which 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 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.”

(Emphasis Supplied)

3. A Perusal of the aforementioned arbitration agreement makes it clear that under the said agreement exclusive right of appointment of arbitrator vests with respondent and the same is impermissible in view of the decisions of the Supreme Court in **TRF Limited v. Energo Engineering Projects Limited<sup>1</sup>** and **Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited<sup>2</sup>** and therefore, the said clause of arbitration agreement would cease to operate.

4. It is stated that the petitioner issued a notice dated 14.05.2024 invoking the arbitration and the same was served upon respondent through Registered Post, E-mail and WhatsApp message however, respondent failed

---

<sup>1</sup> (2017) 8 SCC 377.

<sup>2</sup> (2020) 20 SCC 760.



to respond to the said notice of the petitioner.

5. None appears on behalf of the respondent.

6. This Court vide order dated 20.11.2024, issued notice to the respondent. As per the service report of the registry the respondent has been duly served via e-mail on 13.12.2024 and moreover, petitioner has filed an affidavit of service dated 04.12.2024 according to which the respondent has been served through Speed Post, E-mail and WhatsApp message, receipts of the said service had been filed along with the affidavit of service and a perusal of same reflects that respondent has been duly served.

7. Respondent is accordingly deemed to be served.

8. In view of the fact that there is no appearance on behalf of respondent and there exists a valid arbitration agreement between petitioner and respondent, this Court deems it appropriate to appoint a Sole Arbitrator.

9. At this moment learned counsel for the petitioner states that considering that the quantum of amount, which is subject matter of dispute is approximately Rs. 10,65,000/- therefore, an advocate be appointed as arbitrator and the arbitral proceedings be held under the aegis of Delhi International Arbitration Centre (DIAC).

10. In view of the aforesaid facts and submissions **Mr. Sumehar Bajaj, Advocate** (M. No. 9811156505) (email: sumehar@gmail.com) is appointed as Sole Arbitrator.

10.1 The arbitration will be held under the aegis of the DIAC. The remuneration of the learned Sole Arbitrator shall be in terms of Schedule IV of the Act of 1996.

10.2 The learned Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act of 1996 before entering into the reference.



10.3 It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims, 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.

11. Learned counsel for the Petitioner states that the statement of claim will be duly filed within four (4) weeks.

12. List for preliminary hearing to be presided over by the learned sole Arbitrator on **01.05.2025**

13. The DIAC is directed to issue fresh notice to the Respondent for the hearing dated **01.05.2025**.

14. With the aforesaid direction, the petition stands disposed of.

10.4 The registry is directed to send a copy of this order to Secretary, DIAC for information and compliance and the learned Sole Arbitrator.

15. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, [www.delhihighcourt.nic.in](http://www.delhihighcourt.nic.in), shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

**MANMEET PRITAM SINGH ARORA, J**

**APRIL 7, 2025/msh/AKT**

[Click here to check corrigendum, if any](#)