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

+ **ARB.P. 28/2025**

M/S ENERGY EFFICIENCY SERVICES LIMITEDPetitioner

Through: Mr. Vishal Arun and Mr. Pankaj
Kumar, Advocates.

versus

**RURAL DEVELOPMENT DEPARTMENT(PANCHAYATI
RAJ),GOVT. OF JHARKHAND**Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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28.05.2025

I.A. 264/2025

1. This application is filed on behalf of the Petitioner under Section 151 of CPC, 1908 for condonation of delay of 27 days in re-filing the petition.
2. For the reasons stated in the application, the same is allowed. Delay of 27 days in re-filing the petition stands condoned.
3. Application stands disposed of.

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4. This petition is filed on behalf of the Petitioner under Section 11(5) of Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
5. On 08.01.2025, notice was issued to the Respondent to be served through all permissible modes, including *dasti*, returnable on 11.03.2025. On the adjourned date, affidavit of service filed by the Petitioner was not on record and the matter was adjourned to 28.03.2025 and thereafter to



17.04.2025. Order dated 17.04.2025 records that Respondent was served on 27.01.2025 at the Ranchi office address, through Speed Post as also through courier on 25.02.2025 and *dasti* service was effected on 20.02.2025. None appeared for the Respondent despite the matter being called twice. Counsel for the Petitioner submitted that by way of abundant caution, Petitioner be permitted to serve the Resident Commissioner, Jharkhand at the Delhi address. Accordingly, fresh notice was issued to be served on the Resident Commissioner through all permissible modes, including *dasti*, returnable on 26.05.2025.

6. When the matter came up on 26.05.2025, again there was no appearance on behalf of the Respondent despite two calls and despite the *dasti* notice having been served on the Resident Commissioner, Jharkhand. Counsel for the Petitioner took time to place on record proof of delivery of the invocation notice dated 09.09.2024 under Section 21 of 1996 Act on the Respondent and matter was adjourned for today. Proof of delivery by e-mail, Speed Post and by hand has been filed by the Petitioner.

7. Even today, none appears for the Respondent even on the second call, despite service of notices through all modes, including *dasti* service on the Resident Commissioner, Jharkhand. It is evident that Respondent is not interested in contesting the present petition and is accordingly set *ex parte*.

8. Factual matrix to the extent necessary and as brought forth in the petition is that Petitioner and Respondent entered into a Supply and Implementation Agreement on 08.03.2019 for installation of LED street lights in Village Panchayats of State of Jharkhand. Scope of work included supply of LED street light, fixtures, Arm, connecting wires and consumables. Maintenance was to be done by the Petitioner for a period of



five years and it was agreed that minimum 100 and maximum 200 lights will be installed in the Gram Panchayats, where approval had been obtained.

9. Petitioner avers that it successfully installed the street lights and has been maintaining the same as per the terms and conditions of the Agreement, however, upon raising the invoices, the bills were not cleared despite there being no objection or dispute from the Respondent on any ground. Petitioner made several requests to the Secretary and Director, Directorate of Panchayati Raj, Rural Development Department, Government of Jharkhand for release of the payment, but to no avail. Petitioner sent a legal notice dated 31.07.2023 demanding the outstanding payment, but there was no response. Since the Agreement in question contained an Arbitration Clause 2.11, Petitioner invoked the same and sent a notice dated 09.09.2024 under Section 21 of 1996 Act, proposing the name of a former Judge of the Supreme Court as a Sole Arbitrator. It was stated in the notice that Petitioner was open to considering any other name suggested by the Respondent within 30 days of the receipt of the notice, but in the event of failure to reply to the notice, Petitioner shall proceed in accordance with provisions of the 1996 Act. Respondent failed to act in furtherance of the notice and Petitioner has approached this Court.

10. It is no longer *res integra* that in a petition under Section 11 of 1996 Act, the referral Court has to restrict its enquiry to the existence of the Arbitration Agreement between the rival parties and the limitation period within which the petition is filed. [*Ref. SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754*]. In the present case, the Supply and Implementation Agreement dated 08.03.2019 contains an Arbitration Clause as follows:-



“2.11 Arbitration of Governing Law-

1) In the event a dispute arises out of or in relation to or in connection with the validity, interpretation, Implementation or alleged breach of this agreement (other than those in relation to breach of confidentiality and/ or publicity provision of this agreement) between the parties ("Defaulting parties") shall attempt In the first instance to resolve such dispute through amicable consultations between the Disputing Parties. If the dispute is not resolved through consultations with XXX business days after commencement of discussions (or such longer period as the Disputing parties may agree to in writing) then either of Disputing parties may, by notice in writing to each other, refer to dispute to binding arbitration in accordance with Arbitration and Conciliation act, 1996 (India), as amended.

2) Any reference made to arbitration tribunal under this Agreement shall not affect the performance of terms, other than the terms related to the matter under arbitration, by the Parties under this agreement.

3) The arbitration shall be conducted as follows:

(a) All claims and differences between the parties arising out of or In connection with this Agreement shall be referred to or submitted for arbitration in Delhi.

(b) All proceedings in any such arbitration shall be conducted solely in English.

(c) The arbitration award shall state the reasons on which It is based and shall be final and binding on the Disputing parties and the Disputing parties agrees to be bound thereby and to act accordingly;

(d) The Parties shall bear their respective costs incurred in the arbitration unless otherwise awarded or fixed by the arbitration tribunal; and

(e) The disputing Parties shall co-operate in good faith to expedite, to the maximum extent practicable, the conduct of any arbitral proceedings commenced pursuant to this agreement.

4. This Agreement and any individual purchase order shall be governed by and construed in accordance with the laws of India and courts at New Delhi, shall have exclusive Jurisdiction, subject to the provisions of arbitration under this Agreement; If any provisions of this Agreement should be held Invalid In any proceeding In the court of competent Jurisdiction, said provisions, but only as to such proceeding, shall be



Ineffective, without thereby invalidating any of the remaining provisions of this Agreement.”

11. It is clear that the Agreement between the parties, from which the disputes sought to be referred to arbitration by the Petitioner emanate, contains an Arbitration Clause. Importantly, Respondent has not come forth to raise any dispute on its existence. Petitioner sent a notice dated 09.09.2024 to the Respondent under Section 21 of 1996 Act and proof of delivery through Speed Post, by hand and electronic mode is placed on record. Respondent has failed to act in terms of the notice and Court finds no impediment in appointing a Sole Arbitrator in the present case.

12. Accordingly, Mr. Justice S. Ravindra Bhat, former Judge of the Supreme Court (Mobile No.9818000160) 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.

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

14. 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.

15. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 28, 2025

S.Sharma