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

+ **ARB.P. 268/2016**

SHREE SATKAR MOTORS Petitioner
Through: Mr Abhinav, Advocate.

versus

T.T.R. MOTORS (HONDA)
& ANR. Respondents
Through: Mr Saurabh Kumar Tuteja and Mr
Onkar Nath, Advocates for R-1.
Mr Jatin Sapra, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **07.09.2016**

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that the Arbitrator be appointed for adjudicating the disputes that have arisen between the petitioner and respondent no.1 in respect of an agreement dated 22.06.2008.
2. The petitioner had issued a notice dated 03.04.2014 indicating its intention for appointment of an Arbitrator for resolution of the disputes. The petitioner has further affirmed that the said notice was followed by another noticed dated 22.12.2015 whereby the petitioner caused its advocate to issue a notice for appointment of an Arbitrator.
3. The learned counsel for the respondents does not dispute that the

agreement dated 22.06.2008 was executed between the parties.

4. He, however, raised the following objections:-

(a) That this Court has no jurisdiction as the parties to the agreement are located outside Delhi;

(b) That petitioner is a proprietorship concern and the name of the proprietor is not mentioned in the Memo of Parties; and

(c) That the arbitration notice dated 22.12.2015 has not been received by respondent no.1 and the earlier notice dated 03.04.2014 cannot be considered as a notice of arbitration.

5. Undisputedly, the agreement dated 22.06.2008 contains an Arbitration Clause, which reads as under:-

“15.1. Any and all disputes, arising out of or under this Agreement shall be referred to arbitration of a sole arbitrator nominated by HMSI. The arbitration proceedings shall be conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996 read with any statutory amendment thereof. The place of arbitration shall be New Delhi and the language shall be English.

15.2 Notwithstanding anything contained in clause 15.1 above HMSI shall have right of injunctive relief against the Sub-Dealer before courts of appropriate jurisdiction in case the Sub-Dealer commits a breach of this Agreement. Where judicial intervention is permissible, the courts at Gurgaon shall have exclusive jurisdiction.

6. Insofar as the issue of jurisdiction is concerned, it is seen that under

clause 15.1, the parties had agreed that the place of arbitration would be at New Delhi. The Supreme Court in the case of **Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.**: 2012 (9) SCC 552 has authoritatively held that the Court having jurisdiction over the seat of arbitration would also have jurisdiction under Part-1 of the Act. The relevant extract of the said decision is as under:-

“We are of the opinion, the term "subject matter of the arbitration" cannot be confused with "subject matter of the suit". The term "subject matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be

irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located.”

7. The aforesaid decision has also been followed by the Division Bench of this Court in **Ion Exchange (India) Ltd.v. Panasonic Electric Works Co. Ltd.**: 208(2014) DLT 597.

8. In terms of clause 15.2 of the agreement, the parties agreed that the courts at Gurgaon would have exclusive jurisdiction. However, it is not disputed that the Courts at Gurgaon would have no jurisdiction to entertain a petition under Section 11 of the Act.

9. Insofar as the objection regarding the petitioner not disclosing the name of the Proprietor in the memo of parties is concerned, it is relevant to note that the affidavit filed in support of the petition clearly discloses that Mr Dilip Kisanrao Khasbage is the Proprietor of M/s Shree Satkar Motors. Thus, there is no doubt as to the identity of the petitioner. Although, the petitioner should have mentioned the name of the sole proprietor in the memo of parties and the present petition ought to have been filed in the name of the proprietor, it is not considered necessary to defer the proceedings to enable the petitioner to amend the memo of parties.

10. As far as the objection that the arbitration notice has not been received is concerned, it is seen that the notice dated 03.04.2014 captioned as “arbitration notice” was sent to respondent no.2 for appointment of an

Arbitrator. The petitioner further affirms that this was followed by a second notice dated 22.12.2015 which clearly sought the appointment of an Arbitrator to resolve the disputes between the petitioner and respondent no.1. The petitioner has also enclosed a copy of the postal receipt evidencing dispatch of the notice dated 03.04.2014.

11. The respondents do not dispute the receipt of the notice dated 03.04.2014 but contend that it cannot be read as invocation of the arbitration clause. In my view, the same cannot be readily accepted as the petitioner had unequivocally expressed his desire to settle the disputes that had arisen by arbitration; the letter was also captioned as "ARBITRATION NOTICE".

12. In the given circumstances, I do not find the objections raised by respondent no.1 are considerable. Accordingly, it is directed that that the Arbitrator be appointed under the Rules of Delhi International Arbitration Centre (DIAC). The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

13. The authorized representative of the petitioner and respondent no.1 are directed to appear before the coordinator DIAC on 22.09.2016 at 3:30 PM.

14. The petition is disposed of.

VIBHU BAKHRU, J

SEPTEMBER 07, 2016
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