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

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Date of decision: 10.07.2017

+ ARB.A. 2/2008

YAMAHA MOTOR INDIA PRIVATE LIMITED. Appellant
Through Mr.Sachin Dutta, Sr.Adv. with
Mr.Rahul Malhotra and Mr.Varun
Garg, Advs.

versus

MR. RAJ KUMAR SAHU Respondent
Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. The present appeal is filed under section 37(2) of the Arbitration and Conciliation Act, 1996 seeking to challenge the order dated 20.12.2007 passed by the learned Sole Arbitrator holding that there is no arbitration clause between the parties. It is urged that the respondent expressed an interest to become a dealer of the appellant company. The respondent also made an application on 21.7.1991. Appellant granted the dealership on 12.10.1991 and issued a letter of intent to the said effect. Thereafter parties entered into a dealership agreement.

2. Subsequently, there was a change of name of the appellant company on account of which amendment agreements were sent to the dealers on 7.7.2000. The respondent signed the said amendment agreement dated 7.7.2000. On 28.12.2002 the respondent entered into a fresh dealership agreement with the appellant for a period of three years. Disputes having

arisen between the parties the appellant sent a legal notice on 20.6.2006 asking the respondent to clear its dues. Thereafter the appellant has filed this claim petition before ICA (Indian Council for Arbitration) on 10.10.2006 praying for an Award of Rs.65,63,412/-. The matter was referred to the learned Sole Arbitrator by ICA.

3. The respondent instead filed two suits before the Civil Court, Jhansi praying for a decree of mandatory injunction and for directions to the appellant to restore the dealership of the respondent. The respondent also prayed that the dealership agreement dated 28.12.2002 be declared null and void. Both the suits are said to have been adjourned to await the present decision. The respondent also filed an application under section 16(2) of the Arbitration and Conciliation Act, 1996 before the learned Arbitrator claiming that the learned Arbitral Tribunal has no jurisdiction to try the present claim. It was urged in the said application that no agreement exists as per law as respondent was not present in Delhi on 28.12.2002, the date, on which the agreement was allegedly entered into. It was also urged that the appellant company has procured the said agreement by committing fraud and forgery. It was also urged that the respondent saw the agreement only when the appellant filed an application under section 8 of the Act.

4. It may be noted in the application/ the respondent also makes contradictory statements that the respondent was not willing to accept the terms and conditions of the said agreement and had requested the officials of the appellant company about the same. It is urged that the officials of the appellant company forced the respondent to sign the agreement. As the appellant objected to the arbitration clause, on the request of the concerned official of the appellant company, it is urged that the respondent signed all

the pages of the alleged dealership agreement except page 14, which page contained the arbitration clause.

5. The learned Arbitrator concluded that when the arbitration agreement was made in November, 2001 the respondent did not sign the page containing the arbitration clause and sent a letter objecting to its inclusion. Under the circumstances, the learned Arbitrator concluded that the respondent had impliedly not agreed to the arbitration agreement and he was trying to wriggle out of the same by not signing the page 14 of the dealership agreement.

6. I have heard learned senior counsel for the petitioner. None has appeared for the respondent despite pass over. On the last date of hearing also an adjournment had been sought on behalf of learned counsel for the respondent.

7. Section 7 of the Arbitration Act reads as follows:-

“Section 7. Arbitration Agreement

(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

From bare reading of the abovesaid provision it is abundantly clear that the Arbitration agreement is an agreement between the parties by which they agree to settle their all or some disputes arising out of a transaction, through Arbitration. The Arbitration agreement is of great significance as by this agreement the parties to a transaction exclude themselves from regular judicial process of law (courts), for settlement of disputes arising out of the transaction. If there is an arbitration agreement between the parties, civil courts are barred from adjudicating the claim wholly covered under the arbitration agreement.”

8. Hence, an arbitration agreement is only required to be in writing contained in a document signed by the parties. There is no necessity that each page of agreement has to be signed. The Supreme Court in ***Great Offshore Limited vs. Iranian Offshore Engineering and Construction Company, (2008) 14 SCC 240*** held as follows:-

“36. The respondent contends that because the original signed copy was never given to the applicant, the parties were in negotiations at all times. With respect to the faxed CPA, it

points to the fact that the respondent did not sign every page. It gives further weight to the fact that the faxed copy was not sent vide fax from the respondent to the applicant; rather, it was first sent vide fax from the respondent's main office to its local branch.

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56. Third, nothing in Section 7 suggests that the parties must sign every page. Once again, if I take the respondent's argument to its logical conclusion, I would have no choice but to read the language into the Act that is *not* there. Even if the faxed CPA is construed as a "document", it need only be "signed by the parties" pursuant to Section 7(4)(a). Every page does not need to be signed. If it is considered a "document", then this requirement would be met. As established above, both parties signed the faxed CPA in the signature box at the bottom of Part I. That said, the faxed CPA more closely fits within Section 7(4) (b)'s requirements."

9. A perusal of the dealer agreement dated 28.12.2002 would show that the proprietor of the respondent has signed each page after affixing rubber stamp of the respondent. It is a 15 page agreement signed on each page except page 14. Merely because the 14th page was not signed at the bottom cannot lead to an inference that the respondent did not agree to the arbitration clause or the other terms and conditions stated in the said page 14. In fact respondent has also signed at the very next page at the place fixed for signatures of the respondent. There can normally be no such inference as is claimed by the respondent. The absence of signatures on page 14 of the Agreement does show an intention that the parties agreed that the terms

stated on the said page are not part of the agreement. Parties continued on the basis of this agreement dated 2002 till its termination in 2006. Clauses on page 14 of the agreement including the arbitration clause will continue to bind the parties.

10. The impugned order passed by the learned Arbitrator suffers from patent illegality and is contrary to the provisions of the Arbitration Act, 1996. The order is contrary to Public Policies of India. The said order is accordingly quashed. The petitioner is free to approach the Indian council of Arbitration to appoint a fresh Arbitrator to adjudicate the dispute between the parties. Petition stands disposed of.

JAYANT NATH, J

JULY 10, 2017

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