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

Date of Decision: 19.12.2018

+ **ARB.P. 295/2018**

AXALTA COATING SYSTEMS INDIA PVT.LTD..... Petitioner

Through: Mr. Saksham Tyagi with Mr. Rajeev
L. Mahunta, Advs

versus

M/S SUSEE PREMIUM AUTOMOBILES PVT.
LTD .

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short "1996 Act").
2. Notice in this petition was issued on 23.04.2018.
3. Despite service having been effected on the respondent, the respondent has chosen not to enter appearance in the matter.
4. Briefly, the averments made in the petition are as follows:-
 - 4.1 The petitioner appears to have entered into a Supply Agreement dated 08.10.2013 (in short 'Supply Agreement') with the respondent.
 - 4.2 In terms of the Supply Agreement, the respondent was to lift the goods worth Rs. 50,00,000/- from the petitioner.

4.3 The goods in issue which the petitioner was obliged to supply were “refinish” paints and ingredients such as Primer, Tint, Surfacer, Putty etc.

4.4 It is the petitioner’s case that in terms of the Clause 6 of the Supply Agreement, upfront investment to the tune of Rs. 12,50,000/- in the respondent was also made by the petitioner.

4.5 The petitioner further avers that against the minimum purchase commitment of Rs. 50,00,000/- the respondent had purchased goods worth Rs. 28,47,708/-

4.6 Given the fact that the petitioner was not happy with the way the respondent was conducting its business, it sought the refund of balance investment support extended by the petitioner.

4.7 Accordingly, the petitioner sought refund of Rs. 9,16,100/-. In this behalf, the petitioner makes reference to Clause 15 of the Supply Agreement.

4.8 Furthermore, the petitioner also seeks interest on the aforementioned amount.

4.9 These grievances and assertions were articulated by the petitioner in its notice dated 01.03.2017.

5. I am informed by the counsel for the petitioner that no reply was received to the said notice.

6. It is in these circumstances that the petitioner has approached this Court for appointment of an Arbitrator in terms of Clause 12.3 of the Supply Agreement.

7. Since the respondent has chosen not to enter appearance, there is no rebuttal on record to the assertions made by the petitioner.
8. Thus, having regard to the aforesaid, I am inclined to appoint an arbitrator in the matter.
9. Accordingly, Mr. Kartar Singh Khurana, Retd. ADJ (M: 9810257327), is appointed as an Arbitrator in the matter.
10. The learned Arbitrator will be paid his fee in accordance with the provisions of the Fourth Schedule appended to the 1996 Act.
11. The learned Arbitrator after entering appearance will issue notice to the respondent with regard to the arbitration proceedings.
12. The petition is disposed of in the aforesaid terms.
13. The Registry will dispatch a copy of the order passed today to the learned Arbitrator as well as the respondent at the address given in the petition.

RAJIV SHAKDHER, J

DECEMBER 19, 2018

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