

\$~2

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

+ **ARB.P. 289/2018**

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

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

versus

M/S SINGH CYCLES & MOTOR CO. & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% 19.02.2019

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short "1996 Act").
2. Notice in this petition was issued on 20.04.2018.
3. The respondents entered appearance on 06.12.2018. On that date, three weeks were granted to file a reply to the captioned petition. The petition was listed for further proceedings for today i.e. 19.02.2019.
4. Today, there has been no appearance on behalf of the respondents.
5. Counsel for the petitioner presses for grant of relief in the instant petition.

6. The record shows that the petitioner had entered into a Supply Agreement dated 01.05.2013 (in short “Agreement”) with the respondent no. 1 firm.
7. To be noted, respondent nos. 2 and 3 as per the petitioner’s stand are partners of respondent no. 1 firm.
8. The tenure of the Agreement was four years, commencing from 01.05.2013.
9. Furthermore, under the Agreement, the respondent no. 1 firm was obliged to purchase products of a minimum value of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only) for its body shops.
10. In order to enable the respondents to fulfil their obligations under the Agreement, the petitioner made an upfront investment in the business of the respondents amounting to Rs. 45,43,750/-.
11. It is asserted by the petitioner that the investment was made on 10.06.2013 via its associate, one, M/s Nikhil enterprises.
12. To establish the veracity of this assertion, counsel for the petitioner places reliance on the receipt dated 10.06.2013 issued in that behalf.
13. The grievance of the petitioner is that the respondents failed to discharge their obligation of purchasing products of a minimum value of Rs.1.50 crores.
14. It is in this background that the petitioner claims it served on the respondents a demand notice dated 23.11.2016.
15. Via this notice, the respondents were called upon to pay a sum of Rs. 55,82,924/- along with interest at the rate of 18% per annum

from the due date till date of realisation of the demanded payment.

16. Since there was no response qua the aforesaid demand, the petitioner asserts via another notice dated 31.03.2017 was served on the respondents whereby the arbitration agreement which stands incorporated in Clause 12.3 of the Agreement was triggered.

17. It is the petitioner's stand that no reply was received with regard to this notice as well.

18. The petitioner, it appears, having been left with no choice has approached the Court for necessary relief.

19. As indicated at the outset, despite the respondents having been served and opportunity being given to file a reply, they have chosen to stay away from the proceedings.

20. In these circumstances, the assertions made by the petitioner, in the instant petition remain untraversed.

21. Having regard to the fact that an arbitration agreement obtains between the parties and given the fact that the parties have agreed to exclusive jurisdiction of this Court, I am inclined to grant the relief prayed for by the petitioner.

22. Accordingly, the prayer made in the petition is allowed.

23. Ms. Lalit Mohini Bhatt, Advocate (Cell no: 9910155008) is appointed as an Arbitrator in the matter.

24. The learned Arbitrator will be paid his fee in accordance with the provisions of Fourth Schedule appended to the 1996 Act.

25. The Arbitrator before entering upon reference will file a declaration in terms of Section 12(5) read with attendant provisions of

the 1996 Act.

26. The petition is disposed of in the aforesaid terms.

27. The Registry will dispatch a copy of the order passed today to the respondents.

RAJIV SHAKDHER, J

FEBRUARY 19, 2019

c