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

+ **ARB.P. 461/2019**

IFCI FACTORS LIMITED

..... Petitioner

Through: Mr. Anupam Srivastava and Ms.Divya
Joshi, Advs.

versus

M/S LUMAX AUTOMOTIVE SYSTEMS LIMITED & ORS.

..... Respondents

Through: Mr. Kunal Sharma, Adv. for official
liquidator/Respondent No. 1.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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28.01.2020

1. The present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeks appointment of an Arbitrator for adjudication of the disputes and differences that have arisen between the parties herein in relation to the Factoring Agreement dated 16.03.2009.
2. The relevant arbitral clause is found in Clause 25 of the Factoring Agreement which provides as under:

"All disputes, differences, claims, questions and controversies arising in connection with this Agreement which the parties are unable to settle between themselves, shall be referred to Arbitration, in accordance with the Arbitration and Conciliation Act, 1996 or any statutory amendment or modification thereof The Arbitration proceedings shall be held in the English Language and shall be held at Mumbai/New Delhi."

3. Learned counsel for the petitioner submits that though the petitioner had duly invoked the arbitration clause vide its notice dated 13.06.2019, no response thereto has been received from any of the respondents. He further submits that the learned Company Court, on 16.10.2017, has ordered the respondent no.1 company to be wind up. Consequently, the petitioner had sought and been granted permission by the learned Company Court on 15.07.2019 to initiate and pursue the present application and the ensuing arbitration proceedings.

4. Upon notice being issued, respondent nos.2 to 4 had entered appearance before this Court, but did not file any reply. Today, none has appeared on their behalf. It is, therefore, presumed that they have no objection to the appointment of an arbitrator.

5. Learned counsel for the Official Liquidator who represents the interest of respondent No.1, submits that though he has no objection to the application but in the light of the financial crisis being faced by the said respondent, he prays that the company not be saddled with the responsibility of paying the fees of the Arbitrator. Learned counsel for the petitioner has no objection to this request and submits that the petitioner is willing to bear the portion of fees payable by the respondent no.1, as may be directed by the learned Arbitrator.

5. Thus, in the light of Clause 25 of the Factoring Agreement and the lack of objection from any of the respondents to the present petition, I am inclined to accept the prayers of the petitioner.

6. The petition is, therefore, allowed and Hon'ble Mr. Justice M.S. Liberhan (Retd.) Mobile No. 9876696699, is appointed as the sole Arbitrator to adjudicate the disputes and differences arising between the parties out of the Factoring Agreement dated 16.03.2009.

6. A copy of this order be sent to the learned Arbitrator, Hon'ble Mr. Justice M.S. Liberhan for information and necessary action. It is clarified that the fees of the Arbitrator shall be shared between the parties as determined by the Arbitrator and the applicable provisions of the Act, with a single modification that the liability of the respondent no.1 to pay the fees of the learned Arbitrator shall be dispensed with and, instead, its share of the fees will be borne by the petitioner, in the proportion as determined by the Arbitrator.

7. The petition stands disposed of.

REKHA PALLI, J.

JANUARY 28, 2020

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