

4

\$~1

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

+ **ARB.P. 734/2020**

M/S HERO MOTOCORP LIMITED

..... Petitioner

Through Mr Rahul Malhotra, Mr Varun
Garg and Ms Himanshi Madan,
Advocates.

versus

M/S SHRI MANGAL MOTORS & ORS.

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

23.08.2021

[Hearing Held Through Videoconferencing]

1. The matter has been taken up today as 20.08.2021 was declared a holiday on account of Muharram.
2. None appears for the respondent.
3. An affidavit of service has been filed which indicates that the notices could not be served. The affidavit of *dasti* notice, albeit not on record, has been screen shared with this Court.
4. Mr Malhotra, the learned counsel for the petitioner submits that attempts were made to serve *dasti* notice in person, however, the respondent no. 2 and 3 were not available. The wife and son of the respondent no. 2 were available at the address but refused to accept notice. He submits that the respondents are attempting to avoid service of notice. However, the notice sent by speed post has been served.

Signature Not Verified

Signing Date: 06.11.2024 17:01:42
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

5. Since the respondents are served, this Court does not consider it apposite to await the representation on behalf of the respondents.

6. The petitioner has filed the present petition under Section of the Arbitration and Conciliation Act, 1996 (hereafter the 'A&C Act') praying that an arbitrator be appointed on behalf of the respondents for constitution of an Arbitral Tribunal for adjudication of disputes that have arisen between the parties.

7. The parties had entered into an agreement whereby the respondent no.1 was appointed as a dealer for petitioner's products on a non-exclusive basis at Motihari, Bihar. Respondents 2 and 3 are constituent partners of respondent no.1 firm.

8. On 16.12.2017, the petitioner and the respondent no.1, acting through its partners, entered into an 'Authorised Dealer Agreement' (hereafter the 'Agreement'). The petitioner claims that certain amounts are due and payable by the respondents to the petitioner in terms of the Agreement, but they have failed to discharge their obligations. The petitioner states that on 17.05.2019, representatives of the parties met and respondent no.2 assured the petitioner that a payment of ₹2,64,00,000 (Rupees Two Crores Sixty Four Lacs only) would be made before 31.05.2019. The same was recorded in the Minutes of the Meeting drawn on the said date. But the respondents have failed to clear the outstanding payments.

9. In view of the above, on 08.08.2019, the petitioner sent a demand-cum-termination notice calling upon the respondents to make a payment of ₹2,69,93,514.18 failing which, the Agreement would be terminated. It is stated that although the respondents acknowledged the liability, they have failed to discharge the amounts due. Consequently, on 12.12.2019, the

petitioner served a notice under Section 21 of the A&C Act invoking the agreement to refer the disputes to arbitration.

10. The Arbitration Clause as included in the Agreement reads as under:

“23.16 Arbitration and Dispute Resolution

a) Any dispute or difference between the Parties arising out of or in connection with this Agreement, including any question regarding its interpretation, existence, performance, validity, or termination, either during the term of the Agreement or at anytime thereafter, will be settled between the Parties through friendly consultations and negotiations.

b) If no settlement can be reached through friendly consultations and negotiations discussed in Article 23.16(a) of this Agreement within thirty (30) days of one Party delivering a notice of the dispute or difference to the other Party, then such dispute will be finally settled by arbitration in accordance with the provisions of this Article 23.16.

c) The arbitration proceedings will be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 ("Arbitration Act").

d) The dispute or difference will be referred to a panel of three (3) arbitrators, one arbitrator to be appointed by each Party and the third arbitrator to be appointed by the two arbitrators appointed by the Parties. In the event that either Party fails to appoint its arbitrator within fifteen (15) days from one Party submitting a request for appointment or such arbitrators to the other Party or the two arbitrators appointed by the Parties fail to appoint the third arbitrator within fifteen (15) days from the date of appointment of the second arbitrator, the single arbitrator or the third arbitrator will be appointed in accordance with the provisions of the Arbitration Act.

e) The arbitration proceedings will be held at New Delhi and the language to be used in the arbitral proceedings will be English.

f) The prevailing Party in the arbitration proceedings will be awarded reasonable attorney's fees, if any. and all other costs and expenses in relation to the arbitration proceedings unless the arbitrators for good cause determine otherwise.”

11. By its notice dated 02.09.2020, the petitioner nominated Sh. Padamkant Saxena, Retired Additional District & Sessions Judge, Delhi as an arbitrator, however, the respondents have failed to appoint an arbitrator.

12. In view of the above, there is no dispute as to the existence of the agreement between the parties to refer the disputes to arbitration.

13. In the circumstances, this Court considers it apposite to allow the present petition.

14. Accordingly, Mr. Sanjivan Kumar Sarvaria, District Judge (retired) (Mobile No.9910384642) is appointed as the nominated arbitrator on behalf of the respondents.

15. This is subject to the learned Arbitrator making a necessary disclosure as required under Section 12(1) of the A&C Act and not being ineligible under Section 12(5) of the A&C Act. Both the Arbitrators shall jointly appoint a third Arbitrator as expeditiously as possible for constitution of the Arbitral Tribunal.

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



VIBHU BAKHRU, J

AUGUST 23, 2021

nn