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

Date of Decision: 17.03.2021

+ **ARB.P. 468/2020**

M/S HERO MOTOCORP LIMITED Petitioner

Through: Mr. Vijay Nair, Advocate with Mr. Rahul Malhotra, Mr. Varun Garg, Advocates along with Mr. Amiteshwar Singh and Mr. Sidharth Tewari, AR for Petitioner.

versus

M/S R.K. MAHAJAN ENTERPRISES AND ORS.

..... Respondents

Through: Mr. Nikhil Goel and Mr. Aniruddha Deshmukh, Advocates.

+ **O.M.P.(I) (COMM.) 313/2020**

HERO MOTOCORP LIMITED Petitioner

Through: Mr. Vijay Nair, Advocate with Mr. Rahul Malhotra, Mr. Varun Garg, Advocates along with Mr. Amiteshwar Singh and Mr. Sidharth Tewari, AR for Petitioner.

versus

R.K. MAHAJAN ENTERPRISES & ORS. Respondents

Through: Mr. Nikhil Goel and Mr. Aniruddha Deshmukh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present petitions under consideration, one filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the '*Act*'] and the other filed under Section 9 of the Arbitration and Conciliation Act, 1996, pertain to an Authorised Dealer Agreement dated 20th February, 2018, executed between the parties, containing an arbitration clause.

2. The facts giving rise to the disputes between the parties are summarised as follows:

- i. The Petitioner - Hero Motocorp Limited, is a company incorporated under the Companies Act, 1956, and is involved in the business of manufacturing of two-wheeler automobiles [*hereinafter referred to as 'HML'*]. Respondent No. 1, R.K. Mahajan Enterprises, is a partnership firm [*hereinafter referred to as 'RKME'*], of which Mr. Ravi Karan Mahajan¹ and Ms. Chand Rani² are partners. For the sake of completeness of facts, it is noted that there is a sister concern of RKME, titled M/S. RKM Global, of which Mr. Ravi Karan Mahajan is the sole proprietor [*hereinafter referred to as 'RKMG'*].
- ii. On the basis of the representations of RKME, vide Letter of Appointment dated 08th March, 1985, the Firm was appointed as a non-exclusive dealer of HML's products at Jalandhar, Punjab. Pursuant to the said appointment, RKME and its partners started

¹ Respondent No. 2 in Arb. P. 468/2020 and Respondent No. 3 in OMP(I)(Comm) 313/2020.

² Respondent No. 3 in Arb. P. 468/2020 and Respondent No. 2 in OMP(I)(Comm) 313/2020.

carrying out business as authorised dealers of HML, including sale of products and spare parts, and servicing thereof.

- iii. Thereafter, the parties entered into an Authorised Dealer Agreement dated 20th February, 2018, which was executed in counterparts with one original copy being available with each party [*hereinafter referred to as 'the Agreement'*]. It was executed on behalf of RKME by Mr. Ravi Karan Mahajan in his capacity as partner.
- iv. Owing to the arrears of payments, HML was constrained to issue a termination letter dated 28th August, 2019 wherein, it called upon RKME to clear outstanding dues and to adhere to Clause 19.2 of the Agreement (*being* consequences of termination of Agreement), and further called upon RKME to refrain from carrying out any activities of an authorised seller as well as from using the trademark/trade names of HML.
- v. On 18th July, 2020, HML received an email from Bank of Baroda, GT Road Branch, Jalandhar, Punjab stating that RKME had availed credit facilities from its bank, for which it had submitted the Agreement with HML, and further sought confirmation as to whether RKME was still the Dealer of HML.
- vi. Thereafter, HML invoked arbitration *vide* notice dated 11th March, 2020, and called upon RKME to either agree to the name of a Sole Arbitrator suggested therein or to treat the said name as a nominee of HML and further called upon RKME to nominate its Arbitrator for constituting an arbitral tribunal in terms of the Arbitration Clause.

vii. According to HML, as on 22nd September, 2020, an amount of Rs. 6.45 Crores, (including Rs. 5.25 Crores as principal and Rs. 1.24 Crores on account of interest on delayed payments) is due and payable by RKME and its partners to HML towards products supplied by HML after deducting security deposit of Rs. 4 Lakhs.

3. In the above noted factual background, HML has now approached this Court by way of two separate petitions for: (a) appointment of the arbitral tribunal, and (b) seeking interim reliefs, which are dealt with separately below.

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4. The present petition under Section 11 of the of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the ‘**Act**’] seeks appointment of the arbitral tribunal. The Arbitration Agreement between the parties is contained in the Agreement dated 20th February, 2018 which reads as under:

“23.16 Arbitration And Dispute Resolution

- a) *If no settlement can be reached through friendly consultations and negotiations as 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 other Party, then such dispute will be finally settled by arbitration in accordance with the provisions of this Article 23.16.*
- b) *The Arbitration proceedings will be conducted in accordance with the provisions of the Arbitration and conciliation Act, 1996 (“Arbitration Act”).*
- c) *The disputes 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 of such arbitrators to the other Party or the two*

arbitrators appointed by the Parties fail to appoint the third arbitrator within 15 (days) from the date of appointment of second arbitrator, the single arbitrator or the third arbitrator will be appointed in accordance with the provisions of the Arbitration Act.

- d) The Arbitration proceedings will be held at New Delhi and the language to be used in the arbitral proceedings will be English.*
- e) The prevailing Party in the arbitration proceedings will be awarded reasonable attorney fees, if any, and all other costs and expenses in relation to the arbitration proceedings unless the arbitrators for good cause determine otherwise.”*

5. Mr. Goel, counsel for RKME, has opposed the present petition on several grounds, which are summarized as follows:

- (i) HML has failed to demonstrate how it has validly executed the Agreement.
- (ii) As per Section 4 of the Indian Contract Act, 1872, the communication of acceptance of the proposal would be complete only when it comes to the knowledge of the proposer.
- (iii) Inviting attention to paragraphs 9 (vii) and (viii) of the petition, it was submitted that HML has itself canvassed the case that the agreement was executed in counterparts, to be considered as concluded on the date when, after receiving 2 signed copies from RKME, HML affixed its stamps/signatures upon both the copies of the Agreement.
- (iv) HML never: (a) despatched the purported agreement to RKME, (b) produced any record or proof of dispatch to demonstrate that HML had signed the agreement, or (c) communicated the acceptance/conclusion of contract to RKME.

- (v) HML has admitted the aforesaid fact in its rejoinder affidavit filed before this Court as well, although it was contended that the same is irrelevant to the present petition.
- (vi) Despite having an opportunity to bring on record the proof of dispatch, HML has failed to do so, and this makes it evident that the Agreement dated 20th February, 2018 was never dispatched to RKME. Thus, the facts do not demonstrate that there is any valid executed agreement between the parties.
- (vii) On 31st August, 2019, the first available occasion, RKME has stated that no agreement had been executed between the parties and in case such a document does exist, HML should be called upon to provide the same. Since the existence of the document was denied much prior to filing of the present petition, it establishes that the defence of RKME is *bona fide*. As early as 31st August, 2019, HML was put to notice that RKME seriously disputes the existence of the arbitration.
- (viii) The explanation as pleaded by HML qua the surrounding circumstances, in an attempt to demonstrate that the agreement was indeed executed between the parties, does not inspire confidence, on the basis of the communications exchanged between HML and RKME's bankers. Mr. Goel referred to email dated 18th July, 2020 sent by Bank of Baroda to HML, stating that RKME had availed credit facility from it by submitting the Agreement to the bank itself. It is contended that this assertion is demonstrably false on the basis of a later email dated 13th August, 2020, wherein the Bank wrote to HML again, this time requesting it to share the said Agreement. If

indeed Bank of Baroda possessed a copy of the Agreement, as claimed in the email dated 18th July, 2020, then no occasion could have arisen for it to demand a copy of the same from HML. The uncertainty surrounding such circumstances demonstrates that the execution of the Agreement is in grave doubt.

- (ix) HML admitted in the additional affidavit that the agreement filed before this Court is a photocopy of the Agreement that was sent to RKME. This also raises doubts over the validity of the Agreement.
- (x) In terms of the rules framed by this Court for the appointment of the Arbitrator (*vide Notification No. 16/Rules dated 29th January, 1996*), HML is required to produce the original document of the Arbitration Agreement before Court. Accordingly, this Court had directed HML to produce the original. However, the 'original' as produced does not correspond to the photocopy that was filed with the petition. The failure to produce the original is compounded by the fact that despite having stated in the petition that HML does not have any other agreement/documents in its possession, HML has, in its additional affidavit, filed a completely new document before in the Court. The aforesaid fact assumes greater significance because contrary pleas that have been taken by HML. During the course of oral arguments before the Court, it has been submitted that the agreement dated 20th February, 2018 was received by HML from its bankers. However, contradictorily, it has been pleaded that the photocopy of the set that was despatched to RKME is the one placed on record in the petition. The stand of HML is conveniently altered to suit the situation.

- (xi) On law relating to the jurisdiction of the Court under Section 11(6A), reliance has been placed upon the judgment of the Supreme Court in ***Vidya Drolia v. Durga Trading Corporation***,³ relevant portion whereof is extracted hereinbelow:

“65. The amendment to the aforesaid provision was meant to cut the dead wood in extremely limited circumstances, wherein the respondent is able to ex facie portray non existence of valid arbitration agreement, on the documents and the pleadings produced by the parties.”

- (xii) RKME has demonstrated that the agreement produced alongwith the petition is not the same as the one produced along with the additional affidavit. It is thus *prima facie* evident that there is grave doubt regarding the existence of the Arbitration Agreement between the parties. Reliance is placed upon the judgment of this Court in ***Knowledge Systems v. SM Professional Services***.⁴

6. Countering the aforesaid contentions, Mr. Vijay Nair, counsel for HML submitted that the objections raised by RKME are *mala fide* and that agreements in question have been validly executed. He submitted that, the execution of the documents was done in counterparts, as required under the agreement itself at Clause 23.8, which reads as under:-

“23.8 Counterparts-

This Agreement may be executed in any number of counterparts, each of which when executed will be deemed to be an original of this Agreement with the same force and effect, but all such counterparts will together constitute one and the same instrument.”

³ (2021) 2 SCC 1.

⁴ 2021 SCC OnLine Del 136.

7. RKME and its partners are not denying signatures on the Agreement, which clearly manifests that the Agreement has been validly executed. No proceedings have been initiated by RKME and its partners to challenge the said signatures, even after they purportedly came to know that the document presented to the Court is not allegedly the original one. Next, Mr. Nair relied upon the email dated 18th July, 2020 issued by the Bank of Baroda to contend that unless RKME was in actual possession of the Agreement, the same could not have been submitted by it to its Bankers. The plea taken with respect to the original Agreement not having been filed with the petition is a highly technical plea, made only with the intent to delay the adjudication of the claims of HML. Nevertheless, in compliance of the directions passed by this Court *vide* order dated 14th December, 2020, HML had filed an additional affidavit along with the original Agreement, which was retained by HML. In the said additional affidavit, it has been duly explained that the Agreement was executed in counterparts with one original Agreement being retained by each party. Accordingly, one of the original counter-parts of the Agreement, duly signed by RKME and its partners, is now available on the records of this Court.

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8. The present petition under section 9 seeks the following interim reliefs:

- (A) *Issue appropriate directions to the Respondents, their partners, representatives, agents and employees, restraining them from selling or in any manner dealing with the products and parts of the Petitioner;*
- (B) *Issue appropriate directions to the Respondents, their partners, representatives, agents and employees, restraining them from representing themselves as an*

Authorized Dealer of the Petitioner Company and from using the Trademark, trade name, signage of the Petitioner in any manner whatsoever;

(C) Issue appropriate directions to the Respondents to secure an amount of Rs. 6,49,61,016.48/- (Rupees Six Crores Forty Nine Lakhs Sixty One Thousand and Sixteen and Paise Forty Eight) which is due and payable by the Respondents to the Petitioner and would be the amount in dispute in the arbitration, till the adjudication of arbitral disputes between the Parties;

(D) Award the costs of the Petition in favour of the Petitioner;”

9. Mr. Nair, contended that owing to huge outstanding dues from RKME, HML was constrained to terminate the Agreement. The termination letter dated 28th August, 2019 further called upon RKME to clear the outstanding dues and to adhere to Article 19.2 of the said Agreement. He further submitted that HML is aggrieved that after the termination of the Agreement, RKME has purchased 15 motorcycles of HML between 17th July, 2020 and 23rd July, 2020 in the name of RKMG and is selling the same to its customers, thereby giving the impression that RKME and RKMG are authorised dealers of HML. Further, the email dated 18th July, 2020 from Bank of Baroda to HML, further demonstrates that RKME has been perpetuating the same false impression to its bankers much beyond the termination of the Agreement.

10. In this regard, Mr. Nair also draws the attention of this Court to the invoices placed on record. He submits that the said invoices clearly demonstrate that the same have been issued in the name of RKMG. Despite the fact that RKME is no longer authorised to sell HML's products, the purchases have been made for selling the same to customers on the same premises from which RKME was operating the dealership of HML, thereby giving the false impression that they are still the authorised dealer of HML. The signage being used by RKME is of the same colour and style as that of

HML. Mr. Nair submits that a huge amount of Rs. 6.45 Crores is due and payable by RKME and accordingly, if interim protection order is not passed, in the event the award is passed against RKME, the same would be rendered infructuous. On the other hand, Mr. Goel counsel for RKME and Mr. Ravi Karan Mahajan, at the outset submitted that insofar as prayer (A) sought in the present petition is concerned, the same is now rendered infructuous, as RKME has discontinued selling or dealing with the products and parts of HML in any manner. The branding, the trademark and the signage of HML also stands removed. They submit that an undertaking in the form of statement can be recorded to the above effect with the addition that no point of time hereinafter, RKME intends to sell or deal with the products of HML. Mr. Goel contends that the 15 motor vehicles , noted above have been purchased at full market rate from third-party authorised dealers and the invoice is in the name of RKMKG, and not RKME. This clearly demonstrate that they were not purchased in furtherance of any dealership agreement of HML. The said vehicles were purchased only to be distributed as an incentive to the staff of RKMKG. Moreover, to purchase the motorcycle from authorised dealers at full price and then sell the same to the general public without incurring a loss is against commercial wisdom. He presses that the interim order passed by this court be modified, subject to such conditions as the Court may consider appropriate, so that the 15 motor vehicles in question, can be distributed to the staff/agents of RKMKG as an incentive, which was the objective behind the purchase.

11. As regards prayer (C), Mr. Goel contends that since there is a serious accounting dispute between the parties, HML is not entitled to the said

relief. He further submits that the award, to this effect, is akin to Order 38 Rule 5 and HML has to therefore satisfy that the ingredients of Order 38 Rule 5 exist for grant of such an order. It is the specific case of RKME that the alleged outstanding has arisen because HML has kept unilaterally inflating the credit limit and debiting the account of RKME and not on active business transactions between the parties. This is the reason that the alleged outstanding of Rs. 1.68 Crores as on 11th September, 2018 has ballooned to over Rs. 6 Crores. This unilateral enhancement of the outstanding dues is a result of unilateral debits entries, which are seriously contested and disputed by RKME. It is further contended that the dealings between RKME group and its partners can in no manner, entitle HML to the relief as sought under prayer (C). HML has to independently establish the ingredients of Order 38 Rule 5, in order to sustain a petition under Section 9.

Analysis and findings

12. The Court has considered the contentions of the parties. While exercising its jurisdiction under Section 11 of the Act, the foremost aspect that is to be decided by this Court is regarding the existence of the arbitration agreement. The Court has given anxious consideration to the contentions urged by Mr. Goel, only because this fundamental issue has been contested. The agreement between the parties, as noted in the preceding paragraphs, is a document in writing. This document thus bears the signatures of the parties. The signatures on the documents are not being contested. What has been argued before the Court is that the document, as presented to the Court, is not matching with another copy, which has also

been placed on record. On this basis, an attempt has been made to show that since there is no valid arbitration agreement, the Court should not direct the appointment of the arbitral tribunal. This dispute, in the considered opinion of the Court, does not merit an order of dismissal. The agreement in question, as placed on record in original, is at odds with another copy attached with the petition. However, the reasons behind the difference in a few places have been satisfactorily explained by HML. It has pleaded that the copy of the Agreement which has been filed along with the Petition is a true copy of the original set, which had been sent by HML to RKME, and not of the set which had been retained by HML. The said copy of the Agreement is therefore the counterpart of the same agreement, the original of which is now being placed on record before this Court. Further, the agreement in question itself records that the document is being signed in counterparts, and thus the Court finds merit in the contentions of Mr. Nair that there are bound to be changes in the location of the signatures and the stamps in the two documents.

13. Further, *prima facie*, the Court also finds merit in the submissions of Mr. Nair that the email dated 20th July, 2020, issued by Bank of Baroda, also clearly establishes that the plea raised by RKME is devoid of merits. The said email is placed at page 152 of the documents filed by HML, and reads as under:

“Dear Sir

Re: Authorized Dealer- M/s R. K. Mahajan Enterprises, Jalandhar, Punjab

1. We are nationalized bankers and dealing with public money. We have extended the credit facility to M/s R. K. Mahajan Enterprises, Partners Mr. Ravi

Karan Mahajan S/o Mr. Yash Pal Mahajan, Mr. Lalit Mahajan S/o Mr. Yash Pal Mahajan and Mr. Sunny Mahajan S/o Mr. Sunny Mahajan, Nakodar Chowk, Jalandhar, Punjab, Authorized Dealer of Hero Motocorp Limited.

2. He has submitted the dealership agreement dated 20-02-2018 signed by your good office and the dealer.

3. Please confirm whether Mr. R K Mahajan Enterprises is still a dealer and the said dealership agreement is still valid.

We notice from your company website that is permanently closed.

Copy of Agreement attached.

Regards,”

14. The said email clearly shows that RKME has been portraying itself as a dealer of HML's goods, and had, on a previous occasion, submitted the Agreement to its bankers to avail credit facility. In fact, the bank has also attached a copy of the Agreement, which could only have been given to it by RKME. In light of the same, RKME's plea of lack of possession of the Agreement cannot be accepted.

15. Next, the judgments cited by RKME are of no avail. On the contrary, the said judgments would go against RKME. It is only in cases where RKME is *ex facie* able to show the non-existence of the arbitration agreement, would the Court under this jurisdiction to go into the question of fraudulence of the Agreement. In ***Vidya Drolia and Others v. Durga Trading Corporation***, 2020 SCC OnLine SC 1018, it has been held that when in doubt, the Court has to refer the matter to arbitration. Since, on a *prima facie* basis, the Court is able to conclude that there is an arbitration agreement in existence between the parties, the contention of RKME cannot be accepted. The grounds and objections raised by RKME are not compelling enough for the Court to hold, on a *prima facie* basis, that the arbitration agreement is non-existent. The scope of judicial interference at the pre-arbitral stage, in terms of the statute and as explained by the

Apex court in several cases, is warranted only on a preliminary basis, and on summary scrutiny, a determination can be made regarding the non-existence of the agreement. The defence of RKME, as noted above, at best raises factual questions which the arbitral tribunal would have to determine and decide. For this purpose, RKME is free raise all objections relating to the existence of the agreement, before the arbitral tribunal.

16. In view of the above, the Arbitration petition deserves to be allowed. At this stage, Counsel for RKME, on instructions, submits that without prejudice to its rights and contentions, he does not have any objection if the Court were to appoint a Sole Arbitrator, instead of an arbitral tribunal as envisaged in the agreement, having regard to the quantum of the potential claims of the parties. Counsel for HML makes a similar request. Accordingly, by joint consent, Hon'ble Mr. Justice G.S. Sistani (Retd.) Former Judge, Delhi High Court [+91 9871300034] is appointed as a Sole Arbitrator, to adjudicate the disputes between the parties arising under the Authorised Dealer Agreement dated 20th February, 2018 between: (i) HML and (ii) RKME.

17. With the consent of the parties, it is directed that the learned Arbitrator shall conduct the arbitration proceedings under the aegis of Delhi International Arbitration Centre [*hereinafter referred to as 'DIAC'*] and in accordance with the DIAC Rules.

18. The parties are directed to appear before the learned Arbitrator as and when notified. This is subject to the Arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

19. The learned Arbitrator shall be entitled to charge his fees in terms of Schedule IV of the Act.

20. Now coming to the interim orders to be passed under Section 9 of the Arbitration and Conciliation Act, 1996. This Court vide order dated 29th September, 2020 has granted an interim relief to HML, restraining RKME from selling motor cycle spare parts thereof of HML. The Court also recorded that Ms. Chand Rani is no longer a partner of RKME. The said order reads as under-

“xx xx xx

OMP(I)(COMM) 313/2020

1. The present petition has been filed with the following prayers:-

“In light of above-mentioned facts and circumstances, it is most humbly prayed before this Hon'ble Court that this Hon'ble Court be pleased to:

a) Issue appropriate directions to the Respondents, their partners, representatives, agents and employees, restraining them from selling or in any manner dealing with the products and parts of the Petitioner;

b) Issue appropriate directions to the Respondents, their partners, representatives, agents and employees, restraining them from representing themselves as an Authorized Dealer of the Petitioner Company and from using the Trademark, trade name, signage of the Petitioner in any manner whatsoever;

c) Issue appropriate directions to the Respondents to secure an amount of Rs. Rs. 6,49,61,016.48/- (Rupees Six Crores Forty Nine Lakhs Sixty One Thousand and Sixteen and Paise Forty Eight) which is due and payable by the Respondents to the Petitioner and would be the amount in dispute in the arbitration, till the adjudication of arbitral disputes between the Parties;

d) Award the costs of the Petition in favour of the Petitioner; and

e) Pass any such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.”

2. At the outset, Ms. Ana Upadhyay, Adv. appears for Mr. Siddhesh Kotwal, Adv. for the respondents and states that respondent No. 2 is no more the partner of the respondent No. 1 Firm. She also states, as per her instructions the respondents

dispute the existence of Agreement dated February 20, 2018. She seeks four weeks' time to file reply to the petition.

3. On the other hand, Mr. Rahul Malhotra, learned counsel appearing for the petitioner insists upon an interim order. According to him, the respondent No. 1, which is a partnership firm of which respondent No. 3 is a partner, was appointed as non-exclusive authorized dealer in the territory of Jalandhar, Punjab. However, owing to the breach of various obligations by the Firm and its partners including respondent No. 3 as well as failure on their part in clearing the huge outstanding towards the petitioner, the petitioner was constrained to terminate the appointment of respondent No. 1 as its Authorized Dealer, vide termination notice dated August 28, 2019. The termination was done in consonance with article 7.6 of the Authorized Dealer Agreement.

4. As on date, an amount of Rs.6,49,61,016.48/- is due and payable by the respondent No. 1 and its partners to the petitioner. In support of his submission that the respondent No. 1 and 3 are dealing with the motorcycles / parts thereof of the petitioner, even after termination Mr. Malhotra has drawn my attention to page 157 of the documents, which is an invoice dated July 17, 2020 of Hundal Motors in favour of RKM Global. According to Mr. Malhotra, RKM Global is the proprietorship concern of Ravi Karan Mahajan-the respondent No. 3 herein. He states, on purchasing the motorcycles, Ravi Karan Mahajan, the proprietor of RKM Global is selling the motorcycles / parts thereof of the petitioner from the same premises. According to him, Mr. Ravi Karan Mahajan or RKM Global are not the authorized dealers of the petitioner company. In support of his submission, Mr. Malhotra has drawn my attention to para 5 (page 20) of the petition. He has also shown me the photograph at page 155 of the documents to contend that the display board in the photographs clearly depicts the mark Honda as if the showroom continues to deal with the petitioner.

5. Having heard the learned counsel for the petitioner and the respondents, Notice. Ms. Upadhyay accepts notice. It is directed that the respondent No. 3 as the Proprietor of RKM Global shall not sell / in any manner deal with the motorcycles / parts thereof of the petitioner till the next date of hearing.

xx xx xx”

21. As already noted above, insofar as prayer (A) is concerned, RKME has no objection and in fact gives an undertaking not to sell or deal in any manner with the products and parts manufactured by HML. Accordingly, the directions to the above effect, as contained in the order dated 29th September, 2020, are hereby confirmed.

22. This brings us to the request made by RKME for modifying the order pertaining to the 15 vehicles in question. On this aspect, *vide* order dated 29th September, 2020 by way of the interim order, the proprietor of RKM, was enjoined from selling the products and spare parts of HML's goods. On this issue, the Court is of the *prima facie* view that the letter dated 17th August, 2020 issued by RKME indicates that RKME is still involved in the business of selling and purchase of motor vehicles. HML has also established a *prima facie* case that RKME has defaulted in repayment of the credit facilities availed by its bankers and has paid the interest amount of Rs. 54 lakhs, which is demonstrated on the letter dated 14th September, 2020 issued by Bank of Baroda to RKME, which reads as under:

"Dear Sir,

Re: Your credit facility bearing account No. 010204000000124 in the name of M/s R K Mahajan Enterprises

With reference to our various conversation through personal visit, telephone, e-mail had with good self in respect of your credit facility. As dealership of Hero Motocorps has been cancelled by the company and there are no transaction at all in your account you have committed to repay the credit facility and that too start from 31-08-2020. You have further assured to deposit the at least interest amount of approx. 54.00 lakh till 25th of this month.

After regular follow-up you have not deposited any single rupees in your account till date.

We once again request you to deposit the dues as per your commitment."

23. According to HML, the amount due from RKME is towards the products supplied and sold. It is also claimed that RKME has issued a balance confirmation on 15th May, 2018, confirming that an amount of Rs. Rs.3,59,37,155/- is due and payable by it on account of supply of motor vehicles and a sum of Rs.7,582/- on account of supply of spare parts. Thus, the balance of convenience also lies in favour of HML, and accordingly,

the directions contained in the order dated 29th September, 2020, to the above effect, are also confirmed.

24. Accordingly, the Order dated 29th September, 2020 is confirmed with respect to the 15 motor vehicles in question, and shall continue to operate for a period of four weeks from the date on which the arbitral tribunal is appointed and enters upon reference. Within such time, HML may move an appropriate application under Section 17 of the Act. It is made clear that if such an application is moved, the arbitral tribunal would consider the same on merits, uninfluenced by any observations made by this Court in the Order dated 29th September, 2020 or in this Order. In case an application under Section 17 of the Act is not filed, the protection granted by the Court via its previous Order and this order shall stand automatically dissolved.

25. Mr. Nair submits that the original arbitration agreement, which has been placed on record, be returned for the purpose of conducting the arbitration proceedings. The Registry is directed to return the same to the Counsel for HML, after retaining a copy thereof.

26. Needless to say, the observations made by this Court hereinabove are only for the purpose of deciding the present petition and shall not come in the way of the arbitral tribunal while deciding the disputes that have arisen between the parties.

27. The petitions are allowed in the aforesaid terms.

CRL. M.A. 3854/2021 (under S. 340 Cr.P.C on behalf of the Respondent for initiating proceedings and inquiry against the Petitioner for the offence of perjury) in ARB.P. 468/2020

28. This is an application filed on behalf of RKME for initiating proceedings and inquiry for the offence of forgery alleged to have been committed by HML on oath before this Court.

29. According to RKME, the averments made by HML in its additional affidavit filed before this Court include statements which are an attempt to defraud this Court by stating a set of facts that do not exist. RKME asserts that when HML was confronted with the requirement to produce the original of the Agreement dated 20th February, 2018 before the Court, it disingenuously sought to place reliance upon the fact that the Agreement was executed in counterparts, and the set which was retained by HML is being produced in the original. It is alleged that HML has committed a fraud by producing a document that does not exist and thereby HML has committed a perjury by not stating the truth.

30. In view of the detailed order passed herein, the dispute regarding the existence of the Agreement is a question that has been left open for determination by the arbitral tribunal. Therefore, at this stage, it is not possible for the Court to form a prima facie opinion that HML has intentionally given any false evidence, which is a condition precedent for directing the lodging of a complaint. Considering the nature of the documents and the defence raised by the Applicant, the prosecution for perjury can only be ordered once the parties have led evidence on this

question. Therefore, as of now, the Court is not inclined to pass any directions as sought in the present petition.

31. In the event the evidence led before the learned Arbitrator on this aspect results in a finding that would require initiation of such criminal prosecution, the parties shall be at liberty to take recourse to such measures in accordance with law.

32. With these observations, the application is disposed of.

CRL. M.A. 17262/2020 (under S. 340 Cr.P.C on behalf of the Petitioner for initiating proceedings and inquiry against the Respondent for the offence of perjury) in O.M.P.(I) (COMM.) 313/2020

33. This is an application on behalf of HML for initiating proceedings and inquiry for the offence of forgery committed by the Respondents, by making false statements and lying on oath before this Court. HML contends that the affidavit filed by Mr. R.K. Mahajan is false and fabricated, and is contrary to the record. It is contended that the Respondents, in the letter issued by them to their bank - Bank of Baroda, have denied that they have closed their business operations and have categorically admitted that motorcycles are lying in their showroom for the purpose of sale to their customers. According to HML, it is the Respondents' case that they are not acting as dealers of any other two-wheeler company and have claimed that RKME is now the authorized dealer of M/s Honda Sael Power Systems and has been authorized to sell generators, tilers, brush cutters and lawn mowers. The said statement, therefore, makes it evident that Mr. R. K. Mahajan had purchased the motorcycles of HML with the sole intent of furthering sale to customers

even after termination of dealership. His statement is therefore blatantly false and is an attempt to play fraud upon this Court, and thus the Respondents have committed the offence of forgery which is punishable under the provisions of IPC and Section 340 Cr.P.C.

34. In the opinion of the Court, on the basis of the averments made in the application, it is not possible for the Court to form a *prima facie* opinion that the Respondents have intentionally given false evidence, which is a condition precedent for directing the lodging of a complaint. It is still to be investigated and found as to whether R. K Mahajan has indeed made a false statement. Thus, allowing the application at this stage would be tantamount to returning a finding by this Court, without affording the parties an opportunity to lead evidence. These questions would have to be examined by the arbitral tribunal. Therefore, at this stage, the Court is not inclined to pass the order as prayed for, and accordingly the application is disposed of with a liberty to HML to take appropriate action in accordance with law in the event the trial before the arbitral tribunal results in a finding of fact that indicates that the Respondents have committed any offence as alleged.

35. Accordingly, the present application is disposed of.

36. Copy of the judgment be emailed to the counsels.

SANJEEV NARULA, J

MARCH 17, 2021

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(corrected and released on 28th April, 2021)