

\$~25 (original side)

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

+ **ARB.P. 484/2020**

HERO MOTOCORP LIMITED Petitioner
Through: **Ms. Sangeeta Sondhi, Adv.**

versus

M S DEEP AUTOMOBILES & ANR. Respondents
Through: **None**

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

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01.03.2021

(Video-Conferencing)

1. There is no appearance on behalf of the respondents despite the matter having been passed over once.

2. Ms. Sangeeta Sondhi appears on behalf of the petitioner.

3. It is noticed that there was no appearance on behalf of the respondents on any of the earlier occasions when this matter was listed.

4. No reply, to the petition, has been filed, either, despite service on the respondents having been effected and last opportunity to file reply having been granted on 9th December, 2020.

5. Apparently, the respondents have no opposition to the prayer in

this petition.

6. Accordingly, having heard learned counsel for the petitioner, this Court proposes to dispose of this petition.

7. The dispute arises out of a Dealership Agreement, dated 20th February, 2018, whereby the petitioner had granted dealership, of the vehicles manufactured by it, to Respondent No. 2, for the Sirsa region in Haryana, on non-exclusive basis. The dealership was to subsist for a period of five years.

8. Para 9 of the petition alleges default, on the part of the respondents, in compliance with its obligations under the Dealership Agreement and that huge amounts are, resultantly, payable by the respondents to the petitioner. This resulted in several communications being addressed by the petitioner to the respondents, *inter alia*, on 18th February, 2018, 21st December, 2018, 3rd January, 2019, 23rd January, 2019 and 1st February, 2019. Attempts at an amicable resolution of the difference between the petitioner and the respondents, are also stated to have been made unsuccessfully.

9. A show cause notice was also issued by the petitioner to the respondent on 23rd May, 2019, and the petition asserts that the respondent, in its reply to the show cause notice, admitted to the violation alleged to have been committed by it. Ultimately, it is stated that, *vide* notice dated 28th August, 2019, the petitioner terminated the Dealership Agreement.

10. On 4th February, 2020, the petitioner wrote to the respondents, invoking clause 23.16 of the Dealership Agreement which provided for arbitration as the mode for resolution of dispute and differences relating to the Dealership Agreement. The said clause reads thus:

“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 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 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 of 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 be arbitration proceedings unless the arbitrators for good cause determine otherwise.”

11. Ms. Sangeeta Sondhi, learned counsel for the petitioner, submits that the notice invoking arbitration did not meet any response from the respondents.

12. In view of the aforesaid, this Court disposes of the present petition by referring the matter to the Delhi International Arbitration Centre (DIAC) to appoint an arbitrator to adjudicate on the dispute between the parties.

13. The arbitration would be conducted in accordance with the Rules and Regulations of the DIAC and the fees of the arbitrator would be fixed by the DIAC as per its Schedule of Fees.

14. The parties may contact the concerned officer at DIAC within a period of 48 hours of receipt, by way of e-mail, of a copy of this order.

15. The petition stands disposed of with the aforesaid directions, with no order as to costs.

16. The Registry is directed to e-mail, to learned counsel for the

petitioner as well as to respondent, at the e-mail ID provided in the memo of parties, a copy of order passed today, for necessary compliance.

17. The petitioner is also directed to serve a copy of this order on the respondent, by such means as it may deem appropriate.

MARCH 1, 2021

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C. HARI SHANKAR, J.



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