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ARB.OP.(Com.Div) No.296 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

ARB.OP.(Com.Div) No.296 of 2022

Sikka Motors Pvt Ltd.,
Rep. by its Managing Director,
Sikka House, C-20, Preet Vihar,
Vikas Marg, New Delhi-110 092.

... Petitioner

-Vs-

Hyundai Motor India Ltd., (HMIL),
Unit No.602-606, 6th Floor,
Elegance Tower, Plot No.8,
Commercial Centre,
Jasola, New Delhi-110 025.

...Respondent

Prayer: Original Petition filed under Section 11(6) of The Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to decide the dispute between the Petitioner and the Respondent in accordance with Dealership Agreement dated 24.10.2016.

For Petitioner : Mr.M.S.Krishnan
Senior Counsel
instructed by Mr.M.Aravind Subramaniam
For Respondent : Mr.Thriyambak J.Kannan
of M/s.Khaitan & Co
led by Mr.P.S.Raman
Senior Counsel



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ORDER

Captioned Arb OP has been presented in this Court on 01.07.2022 under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter referred to as 'A and C Act' for the sake of convenience, clarity and brevity] with a prayer for appointment of a Sole Arbitrator.

2. Mr.M.S.Krishnan, learned senior advocate instructed by Mr.M.Aravind Subramaniam counsel on record for the petitioner is before this Court. Mr.Thriyambak J.Kannan of M/s.Khaitan & Company [Law Firm] (led by Mr.P.S.Raman, senior advocate) is before this Court. Mr.Thriyambak J.Kannan of M/s.Khaitan & Company accepts notice on behalf of lone respondent, with the consent of learned counsel on both sides main Arb OP is taken up.

3. This Court is informed by learned counsel on both sides without any disputation or disagreement that captioned Arb.OP is predicted on Clause 11 [captioned 'ARBITRATION'] of an agreement dated 24.10.2016 captioned 'DEALERSHIP AGREEMENT' (hereinafter 'primary contract' for the sake of convenience and clarity).



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4. To be noted, primary contract is between the petitioner and respondent, it *inter alia* pertains to dealership qua sales, service of Automobiles, spares manufactured by respondent before this Court. It is not necessary to dilate further on facts owing to the limited statutory perimeter within which a legal drill under Section 11 of A and C Act has to perambulate.

5. Aforementioned Clause 11 [captioned 'ARBITRATION'] of primary contract reads as follows:

'11. ARBITRATION

All questions, differences, controversies or disputes whatsoever between the PARTIES or their representatives touching upon responsibilities and obligations of the PARTIES or any matter connected with the terms of this Agreement, whether as to construction or otherwise, shall be referred to arbitration of a Sole Arbitrator to be appointed by HMI. The provisions of the Indian Arbitration & Conciliation Act, 1996 or any other re-enactments or statutory modifications thereof for the time being in force shall be applicable for settlement of the dispute, controversies or differences. The decision of the Sole Arbitrator shall be final and binding on the Parties. The venue of the arbitration shall be Chennai and the language of arbitration shall be English. The arbitration proceedings will be on a fast track basis.'



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6. Learned Senior counsel on both sides, on instructions submit that there is no dispute about the existence of aforementioned Clause. In other words aforementioned Clause serves as an arbitration agreement between the petitioner and respondent i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act, there is no dispute about the existence of arbitration agreement is their common say. In the light of statutory perimeter sketched by sub-section (6A) of Section 11 of A and C Act, this by itself makes the task of disposal of captioned Arb OP fairly simple but capturing the trajectory the matter has taken (broadly though) in a nutshell is necessary for completion of facts narrative.

7. It is common say of both sides that arbitrable disputes erupted between the petitioner and respondent qua primary contract owing to which the petitioner before this Court approached Delhi High Court by way of an application under Section 9 of A and C Act, parties were referred to Mediation, the matter reverted to the Court and ultimately, a Hon'ble Division Bench of Delhi High Court presided by Hon'ble Mr. Justice Rajiv Shakdher in and by an order dated 06.05.2022 made it clear that Delhi High Court would not be the supervisory Court or curial Court for that matter. This order was carried to Hon'ble Supreme Court (by the petitioner before me) and before



Hon'ble Supreme Court, the petitioner withdrew the Special Leave Petition on 02.06.2022, wherein Hon'ble Supreme Court had preserved the liberty of the petitioner to pursue further remedies before 'appropriate forum'.

8. This Court, having broadly captured the trajectory the matter has taken in reaching this Court vide captioned Arb OP, now proceeds to straight away appoint a sole Arbitrator as there is no dispute or disagreement between the parties about the existence of arbitration agreement and there is no *ex facie* barred by limitation argument [*Nortel* principle either i.e., *Bharat Sanchar Nigam Limited and another Vs. Nortel Networks India Private Limited* reported in (2021) 5 SCC 738]. This does not mean that limitation issue will not fall for consideration before Arbitral Tribunal if it is raised by either of the parties.

9. Before proceeding further and writing the operative portion of this order, this Court deems it appropriate to remind itself of oft quoted *Mayavati Trading* i.e., *Mayavati Trading Pvt. Ltd vs. Pradyuat Deb Burman* reported in (2019) 8 SCC 714, relevant paragraph is paragraph 10 and the same reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which



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would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.'

(underlining made by this Court to supply emphasis and highlight)

10. Aforementioned Paragraph 10 of **Mayavati Trading** principle takes this Court to **Duro Felguera** principle i.e., **Duro Felguera S.A. Vs Gangavaram Port Limited** reported in **2017 (9) SCC 729**. Relevant paragraphs in **Duro Felguera** principle are paragraphs Nos.47, 59 and the same read as follows:

'47. What is the effect of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as "the 2015 Amendment") with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.

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59. The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in **SBP and Co.** and **Boghara Polyfab**. This position continued till the amendment brought



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about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists – nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Courts intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected.'

11. Aforementioned **Mayavati Trading** and **Duro Felguera** principles make it clear that the scope of a legal drill under Section 11 is limited to examination of existence of arbitration agreement and the narrative thus far will make it clear that there is no dispute or disagreement qua existence of arbitration agreement.

12. Therefore, Hon'ble Mrs.Justice R.Banumathi (Retd.), former Judge of Hon'ble Supreme Court of India at No.C20, Ground Floor, Defence Colony, New Delhi-110 024, (Mob: 7042955477 and 7397329476, e-mail:banumathir1955@gmail.com) is appointed as sole Arbitrator. Hon'ble sole Arbitrator is requested to enter upon reference qua primary contract dated 24.10.2016 between the petitioner and respondent, adjudicate upon the arbitrable disputes that have arisen between the petitioner/ respondent and render an award by holding sittings at 'Madras High Court Arbitration Centre



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under the aegis of this Court' (MHCAC) in accordance with Madras High Court Arbitration Proceedings Rules 2017, fee of Hon'ble Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

13. Captioned Arb OP disposed of in aforesaid manner. There shall be no order as to costs.

05.07.2022

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Note: The Registry is directed to communicate this order forthwith to

1. Hon'ble Mrs.Justice R.Banumathi (Retd.),
Former Judge of Hon'ble Supreme Court of India
No.C20, Ground Floor, Defence Colony,
New Delhi-110 024,
(Mob: 7042955477 and 7397329476,
e-mail:banumathir1955@gmail.com)
2. The Director,
Tamil Nadu Mediation and Conciliation Centre -cum-
Ex-Officio Member,
Madras High Court Arbitration Centre,
Madras High Court,
Chennai 600 104.

Note: Upload forthwith



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M.SUNDAR, J

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