**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

ARB No.201 of 2018 (O&M)

Date of Reserve: 01.09.2022
Date of Decision: 14.10.2022

M/s S.S. Automobiles ......Petitioner

Vs

Akhil Taneja and another
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Neeraj Yadav, Advocate
for the petitioner.

Mr. P.K. Mutneja, Senior Advocate with
Mr. Brijesh Kumar, Advocate and
Ms. Suverna Mutneja, Advocate
for respondent No.1.

Mr. Arun Sharma, Advocate for
Mr. R.S. Narang, Advocate
for respondent No.2.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an independent Arbitrator to adjudicate the dispute/differences between the parties.

[2]. Respondent No.1 is the authorized dealer of Honda Motorcycles and Scooters India Pvt. Ltd. (hereinafter to be referred as 'HMSI'). Respondent No.1 is authorized to sell two wheelers manufactured by HMSI and provides service to the customers. Respondent No.1 contacted petitioner through its General Power of Attorney Sh. Suresh Sharma with a proposal of Sub-Dealership of HMSI to be given to the petitioner. Vide letter dated 09.12.2013, HMSI permitted to appoint the petitioner as Sub-Dealer at Bawal. It was also mentioned in the said letter that a formal Letter of Intent may be issued by respondent No.1, once the terms and conditions of Letter of Intent are fulfilled. Thereafter definitive agreement can be executed. The aforesaid letter dated 09.12.2013 was issued by respondent No.2 to respondent No.1. After issuance of aforesaid letter, all the terms and conditions of Letter of Intent were duly complied with by the petitioner. The Sub-Dealership agreement was executed between the petitioner and respondent No.1 on 30.01.2014.

[3]. The aforesaid agreement contains clause 16.1 in respect of settlement of dispute arising out of the agreement which shall be referred to an Arbitrator/sole Arbitrator nominated by HMSI. The arbitration shall be conducted as per provisions of the Arbitration and Conciliation Act, 1996 read with statutory

amendment thereof. The place of arbitration shall be at Gurugram/New Delhi and the language shall be English.

[4]. The petitioner invested huge amount to start business of Sub-Dealership including construction of showroom and to purchase two wheelers and accessories etc. Respondent No.1 started harassing the petitioner as he wanted to open his own Honda showroom in Bawal. Respondent No.1 sometimes stopped the delivery of scooters and accessories due to which the petitioner had to face serious problems in the business. Petitioner visited the office of respondent No.1 to continue Sub-Dealership of Honda products but the act and conduct of respondent No.1 was against the terms and conditions of Sub-Dealership agreement.

[5]. Petitioner also filed an application under Section 9 of the Act before the principal employer against the conduct of respondent No.1. Prayer was made for restraining respondent No.1 from opening the new agency and from stopping the supply of Honda products but the principal employer did not pay any heed to the request of the petitioner. Petitioner requested the principal employer for appointment of Arbitrator through email dated 11.08.2017. Petitioner requested the dignitaries to appoint an Arbitrator or to mediate the problem which has arisen between the Dealer and Sub-Dealer at Bawal. Due to

stoppage of goods by the Dealer, Sub-Dealer is suffering huge financial loss. If the same is not solved, then the Sub-Dealer would be compelled to seek relief from the Civil Court.

[6]. By referring to the prayer, learned counsel for the petitioner submitted that the appointment of Arbitrator through civil Court under Section 8 of the Act is akin to the prayer under Section 11(6) of the Act and the same does not create any bar for the relief in question. The petitioner filed arbitration case bearing ARB No.243 of 2017 in the High Court and the same was withdrawn on 20.04.2018. The order reads as under:-

> *"The learned counsel appearing on behalf of the petitioner seeks to withdraw the present petition with liberty to file a fresh petition.*
>
> *2. The petition is allowed to be withdrawn.*
>
> ***(S.J. VAZIFDAR)***
> ***CHIEF JUSTICE***
>
> ***20.04.2018***
> *Amodh"*

[7]. Learned counsel further submitted that perusal of aforesaid order would show that prayer made to withdraw the petition with liberty to file a fresh petition was allowed. According to learned counsel the order entails inbuilt mechanism for the permission to file a fresh petition as the prayer was made for withdrawal of the petition with liberty to file a fresh petition. The petitioner has shown tentative value of his claim to the tune of

Rs.78,92,736/-.

[8]. Learned counsel further submitted that stand of the respondent No.1 is wrong as it is evident from clause No.15 of the agreement dated 30.01.2014 that the respondents have not terminated the agreement which was valid upto 29.01.2015 but respondent No.1 kept on supplying the two wheelers, spare parts and accessories upto 27.06.2017 and was also issuing invoices/challan to the petitioner for purchasing the aforesaid articles/goods. Therefore subsisting agreement dated 30.01.2014 was never terminated. Clauses No.14 and 15.2 of the contract agreement reads as under:-

> *"14. Term*
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> *The appointment of the Sub dealer shall be valid for the period of one (1) Year from the Effective Date, unless terminated earlier in pursuance of paragraph 14.2 of this Agreement. This agreement may be renewed by the parties by mutual consent for further period.*
>
> *15.2 In the event of termination of this Agreement:*
>
> *I. The Sub dealer shall sent within three days of such termination complete details of the existing stocks of Two wheeler lying with it and the prices at which the said two wheeler were purchased by the Sub dealer from the dealer. Dealer shall have the preferential right*

to repurchase the sub dealer's existing stock of two wheeler at the price at which these were originally sold to the sub dealer, subject to Two wheeler being exactly in the same condition as originally purchased by dealer.

II. The sub dealer shall return to the dealer all drawing, models, samples, plans, documents, specifications or other information relating to two wheeler, spare partes, accessories etc. and shall destroy all letterheads, invoices, etc. bearing the name of HMSI and/or Dealer.

III. The sub dealer shall deal with or otherwise dispose of all two wheeler, spare partes, accessories, advertising material, trademark, signage, exterior signage, pamphlets etc. in accordance with the manner prescribed by dealer.

IV. Upon termination of this Agreement the sub dealer shall not have any right to compensation for any notional loss of goodwill, customer's expense or any other payment of any nature whatsoever.

V. The sub dealer shall return to the Dealer, records of all the customers, including without being limited to the sales and service records of customers and any other related records within 8 days so as to avoid any inconvenience to the customers.

VI. The notice for termination shall constitute sufficient proof of demand for return of the

> *signs, advertisement and other materials which shall be returned forthwith."*

[9]. Per contra, learned Senior counsel for respondent No.1 submitted that the contract agreement was never renewed by mutual consent beyond 29.01.2015. The agreement was valid for a period of only one year till 29.01.2015 and had expired thereafter. ARB No.243 of 2017 was withdrawn by the petitioner and no liberty was given to the petitioner to file a fresh petition even though the petitioner had sought liberty to file the same. Answering respondent has already terminated business relations with the petitioner vide letter dated 26.07.2017. In response to the aforesaid, the petitioner has also replied to the said letter in affirmative vide email dated 27.07.2017, disclosing that due to loss incurring business from Honda's 2 wheeler sub-dealership/ASC At Bawal, the petitioner is resigning from all business services from Honda 2 wheeler w.e.f. 31.07.2017. Request was made to settle all pending dues upto 31.07.2017.

[10]. Having heard learned counsel for the parties, I find that the order dated 20.04.2018 passed in ARB No.243 of 2017 is in the context of prayer made for withdrawal of the petition with liberty to file a fresh petition. In view of statement made by learned counsel for the petitioner, the same was allowed to be withdrawn. As regards the email dated 27.07.2017 purportedly

sent by the petitioner, the same also relates to settlement of pending dues upto 31.07.2017. Even though the contract was for one year i.e. till 29.01.2015, but respondent No.1 kept on supplying the two wheelers, spare parts and accessories upto 27.06.2017 and was also issuing invoices/challan to the petitioner for purchasing the aforesaid articles.

[11]. In my considered view, the conduct of the parties amounted to implied mutual extension even after 29.01.2015. The parties kept on transacting business even after 29.01.2015. Reference can be made to ***Everest Holding Limited vs. Shyam Kumar Shrivastava and others, (2008) 16 SCC 774*** and ***Reva Electric Car Company Private Limited vs. Green Mobil, (2012) 2 SCC 93*** as the dispute has arisen in relation to termination of original contract agreement and consequence thereof. Such disputes are squarely covered by the arbitration clause which provides for resolution of dispute through arbitration. The clause is not limited to the disputes relating only to the initial period of the contract period i.e. till 29.01.2015 irrespective of whether the contact agreement is now in existence or not, the arbitration clause would survive. The Court is required to refer disputes between the parties to the sole Arbitrator without any in-depth examination of the disputes. The Court is merely to be satisfied that the disputes fall within the

ambit of the arbitration clause. All disputes are to be referred to the sole Arbitrator which need to be decided by the Arbitrator on merits.

[12]. This Court cannot decide the case while exercising powers under Section 11(6) of the Act. In the present case, the conclusion is inescapable that notwithstanding the initial period under the contract agreement expiring by 29.01.2015, the same was not extended beyond that and the same was terminated on 29.01.2015 itself, the matter has to be referred to the Arbitrator. Whether the contract agreement is now in existence or not, the arbitration clause would survive, the ratio of ***Everest Holding Limited's*** case (supra) squarely applies to the present case.

[13]. The dispute has arisen between the parties in respect of contract agreement which was never extended beyond 29.01.2015. The dispute pertains to the subject matter of contract agreement and the date of expiry would make little difference. Section 16(1)(a) of the Act provides that an arbitration clause which forms part of the contract shall be treated as an agreement independent of the other terms of the contract. Bare reading of the aforesaid clause would tend to show that even on the termination of the agreement, the arbitration clause would still survive. The arbitration clause would not come to an end with efflux of time or with effect from

the date of termination of the agreement. In the event of such culmination, the same would lead to very uncertain state of affairs, destroying the very efficacy of Section 16(1) of the Act. Section 16(1) of the Act makes it clear that while considering any objection with respect to the existence or validity of the arbitration agreement, the arbitration clause which formed part of the contract has to be treated as an agreement independent of other terms of the contract. Section 16(1)(b) of the Act further provides that even if the arbitral Tribunal concludes that the contract is null and void, it should not result as a matter of law in an automatic invalidation of the arbitration clause. Section 16(1)(a) of the Act presumes the existence of a valid arbitration clause and mandates the same to be treated as an agreement independent of other terms of the contract. By virtue of Section 16(1)(b) of the Act, it continues to be enforceable notwithstanding a declaration of the contract being null and void. The arbitration clause would not cease to exist with the termination of contract agreement or non-renewal of the same beyond a certain date.

[14]. For the reasons recorded hereinabove, I hereby appoint Dr. Shiva Sharma, District & Sessions Judge (Retd.) # 195, Sector 56 (HUDA), Gurugram, Mob.No.9560520062 as the sole Arbitrator, to resolve the dispute/difference between the

parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

[15]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by the petitioner and respondent No.1 in equal proportion.

[16]. The venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[17]. A copy of this order be dispatched to the Arbitrator at the following address:-

Dr. Shiva Sharma, District & Sessions Judge (Retd.)
195, Sector 56 (HUDA), Gurugram,
Mob.No.9560520062

[18]. Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

14th October, 2022
Atik

Whether speaking/reasoned Yes/No

Whether reportable Yes/No