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

+ **ARB.P. 340/2024 & I.A. 5664/2024**

HERO MOTOCORP LIMITED

..... Petitioner

Through: Ms. Manmeet Kaur, Mr. Gurtejpal
Singh and Ms. Suditi Batra,
Advocates.

versus

SPECTRA AUTO & ORS.

..... Respondents

Through: Mr. Shreeyash Lalit, Mr.
Krishnagopal Abhay and Ms.
Runjhun Garg, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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16.05.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the petitioner and respondent No. 1 under a dealership agreement dated 20.01.2018 [“Agreement”]. The Agreement contains an arbitration clause [Clause 23.16], which provides for resolution of disputes by arbitration of a panel of three arbitrators. It has been provided that the proceedings will be held at Delhi. Clause 23.14 of the Agreement also vests the Courts at New Delhi with exclusive jurisdiction.

2. In the petition, as originally filed, the petitioner claimed to have invoked arbitration by a notice dated 08.11.2023. However, by an



additional affidavit dated 19.03.2024, the petitioner has placed on record an earlier notice dated 28.12.2022 by which the arbitration clause was invoked. Learned counsel for the respondents acknowledged the receipt of the said notice by a letter dated 24.01.2023, but sought further documents which were apparently not provided by the petitioner.

3. Notice was issued in this petition on 13.03.2024, pursuant to which Mr. Shreeyash Lalit, learned counsel, appears on behalf of the respondents. He submits that the respondents wish to resist the petitioner's claims on the ground of limitation, but do not dispute the existence of the arbitration clause.

4. At the stage of appointment of an arbitrator under Section 11 of the Act, the Court's enquiry is limited. Upon a *prima facie* finding that there exists an arbitration clause – which, in this case, is undisputed – the Court will decline reference only if a question of arbitrability, including limitation, is *ex facie* made out from the petition and documents attached therein.

5. In the present case, although the Agreement was of the year 2018, the petitioner has placed on record an e-mail of 26.06.2020 [part of document No. 12 annexed to the petition]. Ms. Manmeet Kaur, learned counsel for the petitioner, submits that the said communication clearly contains an acknowledgement of debt within the meaning of Section 18 of the Limitation Act, 1963. It is her submission that from the said date, the first invocation of arbitration dated 28.12.2022 was made within the limitation period of three years.

6. Having regard to these submissions, I am of the view that the present case is not one in which it would be appropriate to decline



reference. As held by the Supreme Court in *BSNL vs. Nortel Networks (India) (P) Ltd.* [(2021) 5 SCC 738], the question of limitation is one which should ordinarily be left to the arbitral tribunal to decide, except if it is evident that the claims are barred. I do not find the petitioner's contentions to be inarguable, so as to reject them upon this threshold enquiry.

7. For the aforesaid reasons, the petition is allowed. Having regard to the quantum of claims, with the consent of learned counsel for the parties, disputes between the parties under the Agreement dated 20.01.2018 are referred to arbitration of Hon'ble Mr. Justice V.K. Jain, former Judge of Delhi High Court [Tel: 9650116555], who will be the sole arbitrator. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 ["DIAC"], and will be governed by the Rules of DIAC, including as to the remuneration of the learned arbitrator.

8. The learned arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. It is made clear that all rights and contentions of the parties, including on limitation, are left open for adjudication by the learned arbitrator.

10. Pending application too stands disposed of.

PRATEEK JALAN, J

MAY 16, 2024

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