



\$~47

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

ARB.P. 388/2023

M/S VE COMMERCIAL VEHICLES LIMITED Petitioner

Through: Mr. Manu Bajaj, Adv. (M-9999674252)

versus

M/S SURYA AUTOMOTIVE & ORS.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

%

14.03.2024

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner-M/s VE Commercial Vehicles Ltd. under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator in terms of clause 34 of the Dealership Agreement dated 1st April, 2020.
3. Vide order dated 12th April, 2023, this Court issued notice in the present petition to the Respondents-M/s Surya Automotive, Mr. Manish Shah and Mr. Suresh Shah. The relevant extracts of the said order is as follows:

“4. Learned counsel appearing on behalf of petitioner submitted that thereafter, a Demand Notice dated 15th July, 2022 was also issued by the petitioner to the respondent No. 1, demanding clearance of the outstanding dues, but the same turned out to be futile too. Subsequently, the petitioner issued a notice under Section 21 of the Act, 1996 on 23rd December, 2022, invoking respective arbitration clauses i.e. Clause 34 of the Dealership Agreement dated 1st April, 2020 and



Clause 17 of the Agreement for Supply of Float Units dated 18th March, 2020. However, no reply was received from the respondents to the same. Hence, it is submitted that it is an admitted fact that the disputes between the parties are arbitral in nature and thus, a Sole Arbitrator may be appointed by this Court for adjudication of the disputes between the parties.

5. Heard learned counsel appearing on behalf of petitioner and perused the record including the agreements dated 1st April, 2020 and 18th March, 2020, notice under Section 21 of the Act, 1996 as well as the contents made in the instant petition.

6. Keeping in view the facts and circumstances, on filing PF within a week, issue notice to the respondents through all permissible modes, returnable on 22nd May, 2023.”

4. Since then, repeated service has been effected on the Respondents. Vide order dated 22nd May, 2023, this Court noted that the service report was awaited. Fresh notice was issued on 8th August, 2023. Further, vide order dated 21st November, 2023, this Court noted that the Respondents had not been served, and thus, it was directed that the Respondents be served again through all permissible modes. On the next date i.e. 9th January, 2024, this Court noted that Respondent No. 2 was duly served. However, Respondent Nos. 1 and 3 remained unserved. Further, even though the Respondent No. 2 was duly served, he has chosen not to appear.

5. As per the record, a communication dated 17th October, 2023 has been received from the Principal, Senior Civil Judge, ACJ, Ankleshwar, Gujarat. The said communication states that at the address given – one M/s Manya Automobiles Pvt. Ltd. is currently operating instead of M/s Surya Automotive. A letter issued by M/s Manya Automobiles Pvt. Ltd. shows



that the said company was established in July, 2021 and that they are not in any manner connected with the old dealer Surya Automotive or the owners Mr. Manish Shah or Mr. Suresh Shah. The service report dated 14th October, 2023 in Gujarati language has been perused by the Court and the translation of the same reads as under:

“Beliff’s Report dated: 10.10.2023 is that at the written address of Respondent No.3 mentioned in the notice, Harshbhai Manager was present there. He identified him and when asked about Respondent No. 3, informed that he has closed this company two years ago. Since July-2021 we are running this company named Maniya Automobile Pvt Ltd. Thereafter he has also written the certificate on the letter pad of his company. Which is informed to you.”

6. Heard. Upon a perusal of the petition, it is noticed that there are three affidavits of service dated 20th December, 2023, 6th February, 2024 and 16th February, 2024 filed by the Petitioner. As per the said affidavits of service, email service has been repeatedly effected upon the Respondents. Speed post service has also been done. One of the earliest email service report also shows that service on Respondent No. 2-Mr. Manish Shah has been effected. The emails sent by the Registry on the email addresses - manish@suryaautomotive.com and service@suryaautomotive.com have been delivered and have not bounced back. This is sufficient proof of service of the present arbitration petition. This Court is of the opinion that where service has been effected both by the Registry and by the Petitioner, and affidavits of service have been placed on record, a sole arbitrator ought to be appointed.

7. Under such circumstances, this Court is of the opinion that the present



being an arbitration petition, the Respondents are avoiding service as it is possible that they have closed their business at the existing address of-Plot No. 5, Adarsh Market, NH No.8, Ankleshwar, Gujarat-393002.

8. Clause 34 of the said Dealership Agreement between the parties reads as under:

“Any claim, dispute or difference arising out of or in connection with this Agreement or its validity, interpretation, implementation or alleged breach of any of the provisions hereof or any contracts, dealings or transactions pursuant hereto or any rights, obligations, terms or conditions contained in this Agreement or the interpretation or construction of this Agreement or anything done or omitted to be done pursuant to this Agreement, shall as far as possible, be resolved by Parties by mutual consultation.

If Parties fail to reach agreement by mutual consultation within thirty (30) days after a Party has made a request for mutual consultation or such longer period as the Parties may agree in writing, then in that event the claim, dispute or difference may be referred to arbitration by either Party, to a sole arbitrator appointed by Parties by mutual consent and It is further agreed that any dispute, which the Parties are unable to settle through mutual discussion/conciliation within forty five (45) days of expiry of the aforesaid thirty (30) days period then the dispute shall be referred to the sole arbitrator appointed by VECV under the provisions of Arbitration and Conciliation Act, 1996.

The arbitration proceedings shall be conducted at New Delhi.

The arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted in the



English language and the arbitral award shall be in English and shall provide reasons thereof. The award passed by the arbitrator shall be final and binding on the Parties.”

9. The venue of the arbitration proceedings is in Delhi. Under such circumstances, the matter is referred to the DIAC to appoint a Sole Arbitrator to adjudicate the disputes between the parties.

10. Arbitration proceedings shall be conducted under the aegis of the Delhi International Arbitration Centre (*hereinafter, DIAC*), who shall also issue notice on the following email addresses and mobile numbers to the Respondents:

- manish@suryaautomotive.com and
- service@suryaautomotive.com

11. The arbitration proceedings shall be conducted under the Rules of DIAC. The fee of the Id. Sole Arbitrator shall be as per the Fourth Schedule of the Act, as amended by the DIAC.

12. List before the DIAC on 27th March, 2024. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.

13. The present petition along with applications, if any, is disposed of.

PRATHIBA M. SINGH, J.

MARCH 14, 2024/dk/rks/dn
(corrected & released on 20th March, 2024)