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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 581/2024**
AXALTA COATING SYSTEMS INDIA PRIVATE LIMITED

.....Petitioner

Through: Mr. Vivek Sinaha, Mr. Vivek Malik,
Adv.

versus

PNR MOTORS PRIVATE LIMITEDRespondent
Through: Mr. Mahesh B. Chhibber, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
01.08.2024

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1. This is a petition seeking appointment of an Arbitrator arising out of the Supply Agreement dated 24.10.2017.
2. The supply agreement contains arbitration clause being clause No. 12.3 which reads as under:

“12.3 All disputes or differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this Agreement or the breach thereof shall be settled amicably. If, however, the Parties are not able to resolve them amicably within a period, of thirty days or any longer period as agreed upon by the Parties from the date of commencement of such negotiation the same would be resolved by arbitration. The dispute may be referred to the arbitration by either Party after issuance of thirty days notice in writing to other, clearly mentioning the nature of the dispute/differences. Such arbitration shall be conducted by a Sole Arbitrator to be appointed by Parties hereto by mutual consent. The Arbitration and Conciliation Act, 1996 or any



statutory modification thereof shall apply to the arbitration proceedings and the venue for the arbitration proceedings shall be New Delhi (India). All the arbitration proceeding shall be carried out in English language.”

3. The petitioner invoked arbitration *vide* legal notice dated 14.03.2024.
4. Mr. Chhibber, learned counsel for the respondent states that the supply agreement is *void ab initio*, as it has never been acted upon by any of the parties.
5. He states that pursuant to clause 6 of the supply agreement, the petitioner was to invest ₹ 32 lakhs along with another sum of ₹ 6.93 lakhs, which has not been do done. Hence, the agreement was never acted upon.
6. This court under Section 11 of the Arbitration and Conciliation Act, 1996 is only required to see the arbitration clause. The clause reproduced above is duly admitted by the respondent.
7. The question whether there were defaults in the obligations of the petitioner resulting in the contract never been acted upon, is an issue which the arbitrator will decide.
8. The petition is allowed and disposed of with the following directions:
 - xi) Mr. Akshay Sehgal (Adv.) (Mob. No. 9899579000) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - xii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the ‘DIAC’). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
 - xiii) The learned Arbitrator is requested to furnish a declaration in



terms of Section 12 of the Act prior to entering into the reference.

- xiv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- xv) The parties shall approach the learned Arbitrator within two weeks from today.

9. At request of Mr. Chhibber, learned counsel for the respondent, who states that the parties may be referred to mediation to settle the disputes, it is directed that the arbitrator will not enter reference for 8 weeks to enable the parties to explore the possibility of a mediated settlement.

10. List on 09.08.2024 at 03:30 PM before Delhi High Court Mediation and Conciliation Centre.

JASMEET SINGH, J

AUGUST 1, 2024/DM

Click here to check corrigendum, if any