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

+ **ARB.P. 582/2024**

MS AXALTA COATING SYSTEMS INDIA PVT LTD

.....Petitioner

Through: Mr. Ayushman Singh, Adv.

versus

**LOHIA AUTOMOBILES (A DIVISION OF HINDUSTHAN
ENGINEERING CO.) AND ORS.**

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

08.07.2024

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1. This is a petition filed under section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of the Sole Arbitrator to adjudicate the disputes between the parties.
2. Petitioner and respondent No. 1 entered into a Supply Agreement dated 25.01.2021 wherein the petitioner was required to supply refinish paints and ingredients such as primer, tint, metallic base coat etc. to the respondent No. 1.
3. Respondent Nos. 2 to 4 are partners of respondent No. 1.
4. *Vide* order dated 06.05.2024, notice was issued to the respondents.
5. Mr. Singh, learned counsel for the petitioner has drawn my attention to the affidavit of service, wherein notice issued to respondent No. 1 at both the addresses has been refused by respondent No. 1.



6. He further states that each speed post contained notice for all the respondents. Once they have refused the notice, they are deemed to be served.

7. I am in full agreement with the submissions advanced by the learned counsel for the petitioner that once the respondents have refused service to the notice sent by speed post (the proof of refusal is on record accompanied by the affidavit of service), in my opinion, it is deemed service.

8. Today, when the matter was taken up for hearing, there is nobody appearing on behalf of respondent No. 1 or their counsel.

9. In the present case, the arbitration clause is Clause 11.3 of the agreement which reads as under:

“ 11.3. 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 proceedings shall be carried out in English language.”

10. The petitioner invoked arbitration proceedings vide legal notice dated 28.03.2024.

11. For the said reasons, the petition is allowed and disposed of with the following directions:



- i) Mr. Amitabh Narendra, Adv. (Mob. No. 9810214798) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) 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.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of Arbitration & Conciliation Act, 1996 prior to entering into the reference.
- iv) 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 on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- v) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

JULY 8, 2024/DM

[Click here to check corrigendum, if any](#)