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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 733/2023

HERO MOTOCORP LIMITED

..... Petitioner

Through: Mr. Rahul Malhotra, Mr. Priyanshu
Singh, Advs.

versus

M/S MADHUSUDAN AUTOMOBILES & ORS. Respondent

Through: Ms. Aditi Singhal, Adv. for R2
Mr. Arun Saxena, Ms. Nalini, Advs. for R3

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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08.01.2024

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator for adjudication of disputes. The petitioner invoked arbitration vide notice dated 01.12.2022.
2. On 06.10.2023, time was granted to the respondent No.2 to file a reply and on 16.11.2023, further time was granted to file the same. Despite directions being given, no reply has been filed by the respondent No.2.
3. Mr. Saxena, learned counsel appears for the respondent No.3 and has no objection to the appointment of a Sole Arbitrator.
4. The Arbitration Clause is contained in Clause 23.16 of the Dealership Agreement dated 06.01.2018 which reads as under:-

“23. MISCELLANEOUS

23.16 Arbitration and Dispute Resolution

- a) *Any dispute or difference between the Parties arising out of or in connection with this Agreement, including any question*



regarding its interpretation, existence, performance, validity, or termination, either during the term of the Agreement or at anytime thereafter, will be settled between the Parties through friendly consultations and negotiations.

- b) If no settlement can be reached through friendly consultations and negotiations as discussed in Article 23.16(a) of this Agreement within thirty (30) days of one Party delivering a notice of the dispute or difference to the other Party, then such dispute will be finally settled by arbitration in accordance with the provisions of this Article 23.16.*
- c) The arbitration proceedings will be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**").*
- d) The dispute or difference will be referred to a panel of three (3) arbitrators, one arbitrator to be appointed by each Party and the third arbitrator to be appointed by the two arbitrators appointed by the Parties. In the event that either Party fails to appoint its arbitrator within fifteen (15) days from one Party submitting a request for appointment of such arbitrators to the other Party or the two arbitrators, appointed by the Parties fail appoint the third arbitrator within fifteen (15) days from the date of appointment of the second arbitrator, the single arbitrator or the third arbitrator will be appointed in accordance with the provisions of the Arbitration Act.*



- e) *The arbitration proceedings will be held at New Delhi and the language to be used in the arbitral proceedings will be English.*
- f) *The prevailing Party in the arbitration proceedings will be awarded reasonable attorney's fees, if any, and all other costs and expenses in relation to the arbitration proceedings unless the arbitrators for good cause determine otherwise.”*
5. There is no dispute to the execution of the Dealership Agreement.
6. The learned counsel for the petitioner and the respondent No.3 request that instead of an arbitral tribunal of three arbitrators, a Sole Arbitrator be appointed in the matter.
7. For the said reasons, Ms. Justice Mukta Gupta (Retd.) (Mobile No. 9650788600) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
8. 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 Schedule Fourth of the Arbitration and Conciliation Act, 1996 or as the parties may agree.
9. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration and Conciliation Act, 1996 prior to entering into the reference.
10. 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 are left



open for adjudication by the learned arbitrator.

11. The parties shall approach the learned Arbitrator within two weeks from today.
12. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

JANUARY 8, 2024 / (MS)

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