



2024:DHC:8556



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 06.11.2024

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ARB.P. 664/2024**M/S LIVFAST BATTERIES PRIVATE LIMITED**Petitioner

Through: Mr. Amulya Dhingra, Advocate.

versus

M/S SAI SIDDHI

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL.)**

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of a sole arbitrator for adjudication of disputes between the parties. The parties entered into an authorised dealership / distributorship agreement dated 10.09.2020 whereby the respondent was engaged as the authorized dealer for distributing automotive batteries and other ancillary products and services of the petitioner on a non-exclusive basis.

2. The aforesaid agreement contains a dispute resolution clause as under:-

"21 DISPUTE RESOLUTION

21.1 Any and all disputes, controversies and conflicts ("Disputes") arising out of this Agreement between the Parties or arising out of or relating to or in connection with this Agreement and the performance or non-performance of the rights and obligations set forth herein or the breach, termination or invalidity thereof shall be referred to the business head of each party to be settled jointly and amicably within 30 days after written notice of such Dispute has been given by one party to the other party.



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21.2 Failing an amicable settlement of any Dispute pursuant to the above within the specified 30 days period, such Dispute arising out of or relating to this Agreement, shall be settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 or any statutory amendment thereof. The place of arbitration shall be Delhi, India and the language used in the arbitral proceedings shall be English.

21.3 The arbitral tribunal shall consist of one arbitrator to be nominated and appointed by the Company, to which the Authorized Dealer/ Distributor hereby agrees. The authority of the Company to appoint the arbitrator and the arbitrator so appointed shall not be objected to or challenged by the Authorized Dealer/ Distributor in any manner whatsoever.

21.4 The arbitral award and decision by the arbitral tribunal shall be in writing and shall be final, binding and incontestable and shall be enforceable in any court of competent Jurisdiction.

21.5 Pending the submission to arbitration and thereafter until the tribunal renders its award or decision, the Parties shall, except in the event of termination of this Agreement or in the event that injunctive or her equitable relief is granted under this Clause continue to perform their obligations under this Agreement.”

3. That the proprietor of the respondent firm issued a cheque for an amount of Rs. 78,12,353/- (Rupees seventy eight lakhs twelve thousand three hundred and fifty three only) in favour of the petitioner in lieu of the outstanding payments under the authorized dealership agreement.

4. Upon the said cheque being dishonoured, the petitioner issued a notice dated 24.02.2023 under Section 138 NI Act to the respondent calling upon the respondent to remit the outstanding payment within 15 days of receiving the aforesaid notice. However, no payment was made by the respondent towards the said outstanding amount. Accordingly, a complaint under Section 138 NI Act read with Section 141 and 142 of the NI Act was filed by the petitioner against the respondent which is pending before the concerned district court at Gurugram, Haryana presently.



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5. The pendency of the Section 138 proceedings does not pose an impediment to the proposed arbitration proceedings against the respondent. A Co-ordinate bench of this Court in *Newton Engineering and Chemicals Limited and Ors. v. UEM India Pvt. Ltd.* 2023:DHC:8476, following the decision of the Supreme Court in *Sri Krishna Agencies v. State of A.P. & Anr.* (2009) 1 SCC 69 has held as under:-

“6. The relevant part of the Supreme Court judgment in Sri Krishna Agencies (supra) is set out below:-

“4. Mr Adhyaru, learned Senior Counsel appearing in support of the appeal, submitted that the High Court has apparently confused the issue relating to the continuance of the arbitration proceedings as also the criminal proceedings, since when the cheques were dishonoured, a separate liability arose in terms of Section 138 of the Act, whereas the arbitration proceedings were under the agreement signed between the parties. It was submitted by him that the commencement and the continuance of the arbitration proceedings could in no way affect the criminal proceedings taken separately.

5. In support of his submissions, Mr Adhyaru referred to the decision of this Court in Trisuns Chemical Industry v. Rajesh Agarwal where the same question arose in relation to arbitration proceedings taken during the continuance of a complaint filed under Sections 415 and 420 of the Code of Criminal Procedure. In the said decision, it was held that merely because arbitration proceedings have been undertaken, the criminal proceedings could not be thwarted. 6. On behalf of Respondent 2, the submissions which had been urged before the High Court were reiterated which however appear to be unacceptable having regard to the decision cited by Mr Adhyaru.

7. We are also of the view that there can be no bar to the simultaneous continuance of a criminal proceeding and a civil proceeding if the two arise from separate causes of action. The decision in Trisuns Chemical Industry case appears to squarely cover this case as well.”

7. It is clear from the above that the arbitration proceedings as well as the proceedings under Section 138 of the NI Act arise from separate causes of action and the pendency of the arbitration



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proceedings would not affect the proceedings under Section 138 of the NI Act. There is no merit in the contention of the petitioners that the complaint under Section 138 of the NI Act is not maintainable in view of the ongoing arbitration proceedings between the parties. Additionally, whether the aforesaid cheque was given as a security or not is something which can only be proved as a matter of defence during trial.

6. The petitioner has also averred in the present petition that despite *bonafide* efforts being made in furtherance of resolving the dispute, the parties could not reach a settlement. It was only thereafter that the petitioner *vide* notice dated 11.12.2023 invoked the arbitration clause. The said notice was not responded to, although it is stated to have been served on the respondent.

7. Notice was issued in the present petition on 16.05.2024. Requisite steps have been taken by the petitioner to effect service on the respondent, including through substituted service as contemplated in Order V, Rule 20 of the Code of Civil Procedure, 1908, for which I.A. No. 38271/2024 was filed by the petitioner. An affidavit of service dated 29.10.2024 has also been filed pursuant to the said publication.

8. Despite the aforesaid, none appears for the respondent.

9. Since the existence of the arbitration clause is evident from a perusal of the distributorship agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Ltd.* (2017) 8 SCC 377, *Bharat Broadband Network Limited v. United Telecoms Limited* 2019 SCC OnLine SC 547 and *Interplay between Arbitration Agreements under*



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the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re, 2023 SCC OnLine SC 1666 and SBI General Insurance Co. Ltd. v. Krish Spinning 2024 SCC OnLine SC 1754.

10. Accordingly, Mr. Anish Chawla, Advocate (Mob.: +91 9953541910), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

11. Respondents shall be entitled to raise appropriate jurisdictional objections, if any, before the learned sole arbitrator which shall be duly considered by the learned sole arbitrator on merits.

12. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.

13. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

14. Parties shall share the arbitrator's fee and arbitral costs, equally.

15. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

16. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

17. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 6, 2024/dn