



2024:DHC:4178



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 20th May, 2024

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ARB.P. 894/2023**M/S AXALTA COATING SYSTEMS INDIA PVT. LTD.**

..... Petitioner

Through: Mr Aditya N. Prasad, Advocate.

versus

M/S RAJALAKSHMI CARS PVT. LTD.

..... Respondent

Through: Mr Shivam Singh and Mr Sahil Bhatia, Advocates.

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****JUDGMENT****AMIT BANSAL, J. (Oral)**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a sole arbitrator to adjudicate disputes between the parties.
2. It is the case of the petitioner that the respondent approached the petitioner for supply of products such as refinish paints and other raw materials for their workshops. Thereafter, a supply agreement dated 5th March, 2018 was executed between the parties, whereby the petitioner agreed to supply certain products to the respondent for its workshops. Clause 5 of the aforesaid supply agreement stipulated a minimum purchase commitment of Rs.3 crores on the part of the respondent for a period of three years, w.e.f 1st March, 2018 to 28th February, 2021. In view of the said

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commitment, the petitioner made an investment of Rs. 1,26,32,000/-.

3. It is stated on behalf of the petitioner that the respondent had continuously defaulted in meeting the minimum purchase commitment. The respondent achieved a purchase commitment of only Rs. 1,03,32,696/- as on 28th February, 2021. Hence, there was a shortfall of Rs. 1,96,67,304/- on the part of the respondent in meeting the minimum purchase commitment.

4. Consequently, the petitioner sent a termination notice to the respondent on 7th July, 2020. Another notice dated 19th October, 2020 seeking recovery of the amount of Rs. 82,81,246/- towards refund of the investment support along with the interest @12% calculated from due date till the date of actual payments, in accordance with the Agreement between the parties. Via the same notice, the petitioner also invoked arbitration clause contained in Clause 12.3 of the agreement between the parties. The said clause is set out below:

“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.”

5. The respondent did not reply to any of the aforesaid notices. Consequently, the present petition was filed by the petitioner seeking appointment of a sole arbitrator.

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6. Notice in the present petition was issued on 1st September, 2023. Vide order dated 21st November, 2023, the parties were referred to mediation to explore the possibility of settlement. However, it appears that the mediation proceedings were not successful.

7. In the counter-affidavit filed on behalf of the respondent, the respondent has questioned the maintainability of the present petition on the ground that the petitioner has failed to comply with the procedural mandate stipulated in Clause 12.3 of the agreement between the parties. The said clause provides that the parties shall make efforts to resolve the disputes between the parties amicably and only when the parties are not able to resolve the disputes amicably within 30 days, the disputes be referred to arbitration. However, without prejudice to the aforesaid contentions, it is stated in the affidavit that the respondent would be agreeable to the appointment of an independent arbitrator under the aegis of Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter referred to as the 'DIAC').

8. Despite receiving the notice from the petitioner as far back on 7th July, 2020, the respondent did not take any steps to resolve the disputes in an amicable manner. Therefore, this is a fit case for appointment of an arbitrator.

9. In view of the aforesaid, the present petition is allowed and the following directions are issued in this regard:

- i. Mr. Gaurav Goyal, Advocate (Mobile No. 9899886074) is appointed as the sole arbitrator to adjudicate the disputes between the parties.
- ii. The arbitration will be held under the aegis of the DIAC.
- iii. The remuneration of the learned Arbitrator shall be in terms of the

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DIAC Rules.

- iv. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v. The parties shall approach the learned Arbitrator within two weeks from today.
10. Copy of this order be sent to the Secretary, DIAC at email id-delhiarbitrationcentre@gmail.com.
11. The present petition stands disposed of.

AMIT BANSAL, J.

MAY 20, 2024

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