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

+ **ARB.P. 1235/2022**

CNH INDUSTRIAL CAPITAL INDIA PRIVATE Petitioner
Through: Mr.Apratim Animesh Thakur, Adv.

versus

M/S RYR MOTORS Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
% 05.01.2024

I.A. 18230/2022 & I.A. 18231/2022 (exemption)

Exemptions allowed, subject to all just exceptions.

Applications stand disposed of.

ARB.P. 1235/2022

By way of the present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the '*A&C Act*'), the petitioner seeks appointment of an Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes *inter se* the parties.

Learned counsel for the petitioner submits that the petitioner is a finance company incorporated under the Companies Act, 2013 and duly registered with the Reserve Bank of India. Learned counsel submits that on 11.06.2018, the respondent approached the petitioner for the purpose of availing a revolving credit facility of Rs.2,50,00,000/- to facilitate the



purchase of the equipment and goods manufactured and traded by CNH Industrial (India) Pvt. Ltd.

Learned counsel submits that the loan agreement dated 27.06.2018 for Rs.2,20,00,000/- was executed between the parties. Learned counsel submits that such 'loan agreement' included the mutual terms and conditions with respect to the disbursement of the credit facility by the petitioner and its repayment by the respondent. Learned counsel submits that in furtherance of the said agreement, two separate loan agreement accounts were created, one for a loan towards machinery and the other towards spare parts bearing Account Nos. CIN9630368 & CIN9230368. Learned counsel submits that the petitioner in terms of the loan agreement entered between the parties had inter alia advanced to the respondent a revolving loan facility whereby an amount of Rs.1,10,44,174.96 was due and payable by the respondent till 15.04.2021 till 16.04.2021 which is evident from the demand e-mail dated 16.04.2021 sent by the petitioner to the respondent. Learned counsel submits that thereafter a Loan Recall Notice dated 11.08.2021 was sent. It has been submitted that lastly there was an outstanding amount payable as of 11.08.2021 was Rs.42,98,354.69/-.

Learned counsel submits that the respondent had also issued a cheque dated 10.09.2021 which got dishonored on account of 'insufficient funds'. Learned counsel submits that Section 24 of the Loan Agreement included the arbitration clause. Learned counsel submits that the arbitration has duly been invoked vide notice dated 27.10.2021. Learned counsel submits that in the notice 27.10.2021, the outstanding amount was mentioned inadvertently wrongly which was clarified in the subsequent notice dated 01.12.2021.

The notice was issued. However, the respondent has failed to appear and



as per the order dated 30.11.2023 the respondent has duly been served through publication.

It is submitted that the said Agreement contains an arbitration clause in Section 24 of the agreement which provides as under:

“ARBITRATION

Any dispute, controversy or claim arising out of or relating to this Loan Agreement or any related agreement or other documents or the validity, interpretation, breach or termination thereof ("Dispute"), including claims seeking redress or asserting rights under applicable law, shall be resolved and finally settled in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time (the "Arbitration Act"). The Parties consent to a single, consolidated arbitration for all Disputes that may at the time exist. The arbitral tribunal shall comprise of a sole arbitrator to be appointed by the Lender. The arbitration proceedings shall be conducted in English. The arbitration shall be conducted in Delhi. The arbitral tribunal shall determine the Dispute in accordance the law of India and the award passed by the Arbitral Tribunal shall be final and binding on the Parties.”

Learned counsel submits that as per the arbitration clause, the seat of the arbitration is at Delhi. Learned counsel for the petitioner further submits that the respondents were sought to be served at the address mentioned in the Loan Agreement. He further submits that respondents were also served through e-mail provided in the Agreement. The emails have not bounced back. Considering the aforementioned submissions, the respondents are deemed to be served.

The scope of jurisdiction of the court under section 11(6) of the Arbitration and Conciliation Act is very limited to examine whether an arbitration agreement exists between the parties. Reliance can be placed on ***M/S Duro Felguera, S.A. vs Gangavaram Port Limited (2017) 9 SCC 729***



wherein the court *inter-alia* held as under:

*The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in **SBP and Co.** (supra) and **Boghara Polyfab** (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected.*

Considering the above submissions, the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) As agreed, Mr. Shashank Garg, Advocate (Mobile No.9811526671) is appointed as an Arbitrator to adjudicate the disputes between the parties.
- iii) 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 IV of the A&C Act or as the parties may agree.
- 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) 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.

vi) The parties shall approach the learned arbitrator within two weeks from today.

6. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

JANUARY 5, 2024

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