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

+ O.M.P. (COMM) 290/2022, I.A. 10829/2022 & I.A. 23508/2023

LIBRA AUTOMOTIVES PRIVATE LIMITEDPetitioner

versus

BMW INDIA FINANCIAL SERVICES PRIVATE
LIMITED

.....Respondent

+ OMP (ENF.) (COMM.) 166/2022 & EX.APPL. (OS) 3368 -
3369/2022

BMW INDIA FINANCIAL SERVICES PRIVATE
LIMITED

.....Decree Holder

versus

LIBRA AUTOMOTIVES PRIVATE LIMITED
& ORS.

.....Judgement Debtors

+ O.M.P. (COMM) 497/2023 & I.A. 24419-24420/2023

LIBRA AUTOMOTIVES PRIVATE LIMITED

.....Petitioner

versus

BMW INDIA PRIVATE LIMITED

.....Respondent

+ OMP (ENF.) (COMM.) 69/2024 & EX.APPL.(OS) 496-497/2024

BMW INDIA PRIVATE LIMITED

.....Decree Holder

versus

LIBRA AUTOMOTIVES PRIVATE LIMITED
AND OTHERS

.....Judgement Debtors

Appearances:

Mr. Vinam Gupta, Mr. Aamir Siraj, Ms. Megha Rana, Advocates for
Libra Automotives Pvt. Ltd. & Ors.

Mr. Diwakar Maheshwari, Mr. Yugam Taneja, Ms. Kaarunya Laxmi,



Advocates for BMW India Pvt. Ltd.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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19.07.2024

O.M.P. (COMM) 290/2022 & O.M.P. (COMM) 497/2023

1. By way of these petitions, the petitioner challenges arbitral awards dated 30.11.2021 and 08.08.2023, by which disputes between the parties under agreements dated 21.06.2016 and 01.12.2017, respectively, were adjudicated.
2. I have heard Mr. Vinam Gupta, learned counsel for Libra Automotives Pvt. Ltd. & Ors., and Mr. Diwakar Maheshwari, learned counsel for BMW India Financial Services Pvt. Ltd. and BMW India Pvt. Ltd.
3. The principal contention of Mr. Gupta is that the learned Arbitrator was appointed unilaterally by the respondent, and that the constitution of the Arbitral Tribunal was, in any event, not in accordance with the arbitration clause in the agreement dated 01.12.2017. He submits that the judgments of the Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited* [(2020) 20 SCC 760], which have been followed by several judgments of this Court, clearly establish that awards rendered by a unilaterally appointed arbitrator are null and void *ab-initio* and liable to be set aside.
4. Although Mr. Maheshwari disputes the aforesaid contentions in the facts and circumstances of the case, a consensus has emerged in the course of hearing, which makes adjudication of the rival contentions of



the parties unnecessary.

5. At the request of learned counsel for the parties, and with their consent, O.M.P. (COMM) 290/2022 and O.M.P. (COMM) 497/2023 are disposed of, with the following directions:

- A. The impugned awards dated 30.11.2021 and 08.08.2023 are set aside.
- B. The disputes between the parties, under agreements dated 21.06.2016 and 01.12.2017, will be adjudicated by arbitration of Hon'ble Ms. Justice Indira Banerjee, former Judge, Supreme Court of India [Tel: 9560808777].
- C. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration and Conciliation Act, 1996, prior to entering upon the reference.
- D. The arbitrations will be treated as two separate arbitrations for all purposes, but it is for the learned Arbitrator to decide whether the hearings are required to be held together or separately. One of the issues before the erstwhile learned Arbitrator was whether the proceedings under the two agreements were to be consolidated into a single arbitration. Mr. Gupta submits that the petitioner does not press that point any further.
- E. The arbitration proceedings will be taken up at the stage of final hearing. The pleadings and evidence led before the erstwhile learned Arbitrator will be placed before the learned Arbitrator appointed today, by learned counsel for the parties.
- F. The arbitration proceedings will be conducted under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah



Road, New Delhi [“DIAC”] and subject to the Rules of DIAC, including as to the remuneration of the learned Arbitrator.

G. All rights and contentions of the parties on the merits of the matters are left open for adjudication by the learned Arbitrator. It is made clear that this Court has made no comment thereupon.

6. Mr. Maheswari submits that there were two individual guarantors under the agreements in question. They were initially arrayed in the arbitration proceedings, but later deleted. They are not parties to the present proceedings. Mr. Maheswari reserves the right of the respondents to take their remedies against the guarantors, in accordance with the guarantee deeds, in such manner as they may be advised. As the guarantors are not represented, it is made clear that this observation is not intended to prejudice any defences or remedies available to them in law.

7. In the event that the respondents are entitled to a refund of stamp duty on the awards, in accordance with the Indian Stamp Act, 1899, they may take necessary steps for this purpose.

8. All pending applications stand disposed of.

OMP (ENF.) (COMM.) 166/2022 & OMP (ENF.) (COMM.) 69/2024

As the awards under enforcement have been set aside by the order made today in O.M.P. (COMM) 290/2022 and O.M.P. (COMM) 497/2023, the enforcement proceedings, alongwith all pending applications, are disposed of.

PRATEEK JALAN, J

JULY 19, 2024

“Bhupi”/