



2024:DHC:5620



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

+ **ARB.P. 1340/2023**

HERO MOTO CORP LIMITED

.....Petitioner

Through: Mr. Rahul Malhotra, Mr. Rishu
Kant Sharma, Advs.

versus

M/S DHRU AUTOMOBILES & ORS.

.....Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)

29.07.2024

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1. This is a petition under Section 11(6)¹ of the Arbitration and Conciliation Act 1996², seeking intervention of this Court to appoint an arbitrator to represent the respondents.

2. The dispute, which the petitioner seeks referred to arbitration, arises in the context of an Authorised Dealer Agreement³ dated 27 February 2018 between the petitioner and the Respondent 1 firm, of which Respondents 2 to 4 are partners. The agreement has been signed by the petitioner and Respondent 3 (on behalf of Respondent 1).

¹ (6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

² “the 1996 Act” hereinafter

³ “ADA” hereinafter



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3. Under the ADA, the Respondent 1 was appointed as a non-exclusive authorised dealer of the petitioner.

4. The petitioner alleges that the respondents are in breach of their obligations under the ADA and that an amount of ₹ 11,79,74,331/- was due from the respondents to the petitioner as on 7 November 2023.

5. The ADA contained the following clause, envisaging resolution of disputes by arbitration:

“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



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arbitrator, the single arbitrator or the third arbitrator shall 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 under the arbitrators for good cause determine otherwise."

6. Inasmuch as the arbitration agreement envisages the dispute being conducted by a panel of three arbitrators, with one each to be nominated by each party and the third arbitrator to be nominated by the two arbitrators so appointed, the petitioner addressed a notice to the respondents under Section 21 of the 1996 Act on 8 November 2023, highlighting the dispute with the respondents and suggesting the name of a learned retired Judge of this Court as the petitioner's arbitrator.

7. The respondents were, therefore, called upon to name their arbitrator in terms of Clause 23.16 of the ADA. The respondents have not done so.

8. The petitioner is, therefore, before this Court under Section 11 (6) of the 1996 Act.

9. Notice in this petition was issued on 18 December 2023. As the respondents could be served only by email, the petitioner moved IA 6029/2024, seeking permission to serve the respondents by



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publication. By order dated 3 May 2024, the prayer was allowed and the petitioner was permitted to serve the respondents by publication in two national newspapers as well as re-attempt service on the respondents' e-mail id herohonda@dhruautomobiles.com.

10. That has also been done. Proof of publication has also been placed on record with an affidavit of service.

11. There is no appearance on behalf of the respondents; nor have the respondents chosen to file any reply to this petition.

12. The scope of inquiry by a Section 11(6) Court has now been considerably circumscribed by the recent judgment of the Supreme Court in *SBI General Insurance Co. Ltd. v. Krish Spinning*⁴. The Section 11(6) Court has essentially only to satisfy itself whether there exists any arbitration agreement between the parties. All other issues have ideally to be relegated for consideration by the learned Arbitral Tribunal.

13. In the present case, there is no response to the present petition. It cannot be said, therefore, that the respondents have joined issue with the petitioner on any aspect of the matter.

14. In the circumstances, the Court is constrained to allow the present petition.

⁴ 2024 SCC Online SC 1754



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15. The Court, accordingly, requests Hon'ble Ms. Justice Indermeet Kaur Kochhar (Tel: 9910384614), a learned retired Judge of this Court to accept appointment as the respondents' arbitrator.

16. The learned Arbitrator is requested to file the requisite disclosure under Section 12 of the 1996 Act within a week of entering on the reference.

17. The arbitrator appointed by the petitioner and the arbitrator appointed on behalf of the respondents by the order passed today shall proceed to appoint a third arbitrator in accordance with the ADA.

18. As requested by Mr. Malhotra, the dispute shall take place under the aegis of the Delhi International Arbitration Centre (DIAC), and shall abide by its rules and regulations.

19. The fees of the learned arbitrator shall be fixed by the learned arbitrator in consultation with the parties.

20. The petition stands allowed in the aforesaid terms.

C. HARI SHANKAR, J.

JULY 29, 2024

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Click here to check corrigendum, if any