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

+ **ARB.P. 1359/2023**

M/S AXALTA COATING SYSTEMS INDIA

PVT. LTD.

..... Petitioner

Through: Mr. Prasanna Mohan, Mr. Aditya
Narayan Prasad, Mr Aramaan Verma
& Mr. Ayushmaan Singh, Advs. (M:
9711799787)

versus

M/S SPL MOTORS PVT. LTD.

..... Respondent

Through:

Ms (Dr). Swati Jindal, with Ms.
Nidhi Kumar, Mr. Sowmya China
and Mr. Abhimanyu Kumar, Adv.
(M: 9911232024)

**CORAM:
JUSTICE PRATHIBA M. SINGH**

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**ORDER
08.04.2024**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner- M/s Axalta Coating Systems India Pvt. Ltd. under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter 'the Act'*) seeking the appointment of a Sole Arbitrator to resolve the disputes and differences between the parties. The said disputes are stated to be arising out of the supply agreement dated 23rd December, 2019 (*hereinafter 'the agreement'*).



3. The dispute which has arisen between the parties in respect of minimum purchase commitment contained in the agreement to purchase products worth a minimum of Rs. 1,20,00,000/- (Rupees One Crore Twenty Lakhs Only) during a period of thirty-six months (three years). According to the Petitioner, the Respondent has failed to achieve this commitment as required by the agreement. It is the claim of the Petitioner that as per the Respondent was only able to achieve a purchase of Rs. 83,97,045/- in the said period of three years, it is liable to get a refund of Rs. 23,23,808/- (Rupees Twenty-Three Lakhs Twenty-Three Thousand Eight Hundred and Eight Only). Consequently, the Petitioner issued legal demand notice on 14th June, 2023 seeking payment of a sum of Rs.23,23,808/- in terms of clauses 5, 7 and 15 of the agreement.

4. It is the claim of the Petitioner that no reply was received from the Respondent. Thereafter, the Petitioner, in fact, has invoked Arbitration under Section 21 of the Act and has also suggested the name of the Sole Arbitrator to resolve the disputes between the parties.

5. Ld. Counsel for the Respondent has been served and has entered appearance. She submits that the Respondent also wishes to explore amicable resolution through Mediation. Accordingly, she prays that some time may be granted to explore amicable resolution through Mediation.

6. The arbitration clause in the agreement reads as under:

“12 Governing law, Jurisdiction and Dispute Resolution

12.1 This Agreement, its performance and any dispute or claim arising out of or in connection with it shall be governed by and construed in all respects in accordance with the laws of India.

12.2 All Disputes or claims arising out of or relating to



this Agreement shall be subject to the exclusive jurisdiction of the courts at New Delhi to which the Parties irrevocably submit.

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.”

7. In terms of the above clause, it is clearly recorded that if there are any differences, the matter/dispute is to be referred to a Sole Arbitrator. Accordingly, **Ms. Nidhi Raman, Advocate (M:9891088658)** is appointed as the Sole Arbitrator in this matter to adjudicate the disputes between the parties. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre (‘DIAC’). The fee of the Id. Sole Arbitrator shall be paid in terms of the 4th Schedule as amended by DIAC Rules, 2023.
8. The Arbitrator shall enter reference on 22nd July, 2024.
9. In the meantime, if there is any settlement parties may communicate the consent terms to the Arbitrator/DIAC.



10. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.
11. The petition is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH, J

APRIL 8, 2024

dj/am