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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1366/2023**

AXALTA COATING SYSTEMS INDIA PRIVATE
LIMITED

..... Petitioner

Through: Mr. Shubham Bharara, Adv. (M:
9810897998)

versus

FRIENDLY MOTORS INDIA PRIVATE LIMITED..... Respondent

Through: None.

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AND

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ARB.P. 1367/2023

AXALTA COATING SYSTEMS INDIA PRIVATE
LIMITED

..... Petitioner

Through: Mr. Shubham Bharara, Adv. (M:
9810897998)

versus

FRIENDLY MOTORS INDIA PRIVATE LIMITED..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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20.03.2024

1. This hearing has been done through hybrid mode.
2. This is a petition filed by Axalta Coating Systems India Pvt. Ltd. seeking appointment of an arbitrator as per clause 12.3 and clause 11.3 of the Supply Agreement dated 6th March, 2019, and 13th January, 2021 with respect to disputes arising between the parties.
3. The Petitioner in the present case has been engaged in the business of Refinish Paints including ingredients such as Primer, Surfacer, Putty, Tints, Hardener, Metallic Basecoat, Clear Coat, Thinner and Metal Treatment



Chemicals, Enviro-Friendly low emission Paint Systems, etc. The Respondent on the other hand is engaged in providing Automotive Service. The Respondent nominated Petitioner as a Paint Supply source for a period of three years from 1st April, 2019 to 31st March, 2023 vide a supply agreement dated 6th March, 2019 and from 1st January, 2021 for another 3 years as per supply agreement dated 13th January, 2021.

4. The case of the Petitioner is that the Respondent did not comply with the Minimum Purchase Commitment of Rs. 2 Crores and only purchased material worth Rs. 1,57,89,333/-. Thereafter, on 7th March, 2023, the Petitioner invoked the arbitration clause vide a legal notice.

5. In **ARB.P.1366/2023**, the Respondent has been served. Registry has reported that a letter was received from the Respondent on 28th January, 2024. The said letter reads as under:

“This has reference to Court notice that, we are party to an Arbitration agreement under section 11 (6) of the Arbitration and Conciliation Act, 1996 as filed by our supplier M/s Axalta Coating Systems India Pvt. Ltd, New Delhi.

We have called the authorized person to our office and discussed all the issues and have taken time for settlement of the same. The copy of the mail as sent by our supplier is attached herewith for your reference. We have approached the supplier to intimate their advocates on this development and to inform the court. Hence, we plead before the Hon'ble judge to provide us time till the settlement is completed from our side over a period of time as per the discussions still underway., and not to file Arbitration agreement against our Company and oblige.”

6. The proposal by the Respondent dated 11th January, 2024 reads as under:



“We discussed the same with the higher management and considering the business relations and present circumstances, the Company will be able to waive off the interest amount and litigation cost. Hence, to reach at an amicable settlement we would request you to pay the principal amount as the lumpsum settlement amount i.e., INR 77.85464 Lacs (16.24054 Lacs + 61.61410 Lacs) in one installment.

Kindly share your confirmation on the above and we can sign the settlement agreement and withdraw arbitration proceedings accordingly.”

7. On the last date, Id. Counsel for the Petitioner was directed to seek instructions for amicable resolution. Today, Id. Counsel submits that a meeting was held between the parties and the Respondent was not willing to pay even the principal amount.

8. The Respondent has clearly been served and has not put in appearance before this Court. The arbitration clauses in the supply agreements dated 6th March, 2019 and 13th January, 2021 reads as under:

“Agreement dated 6th March, 2019

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. “

“Agreement dated 13th January, 2021

11. Governing law, Jurisdiction and Dispute Resolution

11.1 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.

11.2 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.

11.3 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.”*

9. As per the above clauses, the seat of arbitration is Delhi. Accordingly, **Mr. Saurabh Dev Karan Singh, Adv. [M:8527022200]** is appointed as the Sole Arbitrator in these matters to adjudicate the disputes arising between the parties by virtue of supply agreements dated 6th March, 2019 and 13th January, 2021. The Arbitration proceedings shall take place under the aegis of the Delhi International Arbitration Centre (*hereinafter, DIAC*). The arbitration proceedings shall be conducted under the Rules of DIAC. The fee of the Id. Sole Arbitrator shall be as per the Fourth Schedule of the Act, as amended by the DIAC.

10. List before the DIAC on 27th March, 2024. Let a copy of the present order be emailed to Secretary, DIAC on email id-delhiarbitrationcentre@gmail.com.

11. The present petition along with applications, if any, is disposed of.

PRATHIBA M. SINGH, J

MARCH 20, 2024

dj/ks