



2024:DHC:9549



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

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Date of Decision : 10.12.2024+ **ARB.P. 1362/2024****EXXONMOBIL LUBRICANTS PRIVATE LIMITED**Petitioner

Through: Ms. Kavita Sarin, Adv.

versus

ASHA AUTOMINE PRIVATE LIMITED

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the A&C Act') seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. The disputes between the parties have arisen in the context of a "Lubricants Direct Sale Agreement" dated 18.10.2018 executed between the petitioner and the respondent. The Agreement facilitated the supply of certain quantities of Volvo-branded fluid products to the respondent by the petitioner. Article 15.1 of the Agreement required the respondent to pay invoices without set-off or deduction by the due date. Further, Article 5.3 imposed interest at 18% per annum on overdue payments.

3. Pursuant to this Agreement, the petitioner supplied products to the respondent and issued invoices, which became due for payment within two months from the date of the invoices. The respondent did not dispute the



2024:DHC:9549



quantity or quality of the products and accepted the products without any protest.

4. Disputes have arisen between the parties due to the respondent's failure to fulfil its payment obligations for the supplies delivered by the petitioner between May 2020 and July 2020. This default has resulted in outstanding dues amounting to ₹48,04,969/- (Rupees Forty-Eight Lakhs Four Thousand Nine Hundred and Sixty-Nine), which remain unpaid.

5. The arbitration clause in the Agreement between the parties, is in the following terms: -

“ARTICLE 23- GOVERNING LAW & DISPUTE RESOLUTION

23.2 This Agreement shall be governed by and construed in accordance with the laws of India.

23.2 In the event of any dispute, difference or claim arising out of or in connection with this Agreement, either Party may notify the other in writing of the substance of the dispute and the Parties shall use their best efforts to resolve such dispute amicably through discussion.

23.3 If the dispute is not settled within 30 (thirty) days of notification, either Party may refer such dispute to Arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996 and the Rules framed thereunder (as may be amended from time to time). For the purposes of any arbitration, the parties shall appoint a single arbitrator by the mutual consent, the venue for arbitration shall be New Delhi, India, and the language of arbitration shall be English.

23.4 Nothing herein shall restrict or impair a party's right to seek necessary and appropriate injunctive relief to maintain the status quo pending the outcome of the arbitration, or any other temporary measures from the courts of competent jurisdiction to enjoin the other party from taking certain actions which may infringe on the rights of the party bringing such claim, provided that any proceedings and decisions as to the merits of the dispute, including permanent injunctions, are exclusively governed and resolved by arbitration in accordance with this clause.

23.5 Without prejudice to Articles 24.2 and 24.3, any litigation in connection with this Agreement shall be brought in the courts of New Delhi, India.”



2024:DHC:9549



6. Disputes having arisen between the parties, the petitioner served a demand notice to the respondent on 29.04.2021, however, the respondent neither replied nor made any payment. The petitioner subsequently sent a reminder on 06.05.2021, to which the respondent replied on 08.05.2021, citing financial difficulties due to the termination of its dealership by Volvo CE. The petitioner countered this on 17.05.2021, stating that the respondent's dealings with Volvo CE were unrelated to the pending dues.

7. Further communications on 22.06.2021 and a legal notice on 03.08.2021 also failed to elicit payment or an adequate response from the respondent.

8. Subsequently, the petitioner invoked arbitration through notices dated 11.10.2023, and 31.10.2023. However, the respondent failed to respond or consent to the appointment of an arbitrator.

9. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

10. In the present proceedings, notice was issued by the Court on 04.09.2024. The petitioner has taken the requisite steps to serve the respondent at its known address. It has been brought out that the respondent has been served through courier and speed post, however, the communication sent to the address via speed post was returned with the notations, "*Item Returned, Addressee Left without instructions*". Similarly, the communication sent to the address via courier was returned with the notations "*Company Closed*". The relevant tracking reports have been placed on record along with the affidavit of service dated 05.12.2024, filed on behalf of the petitioner.



2024:DHC:9549



11. The respondent is stated to have been also served via email at *mvvraro@gmail.com*, *mohan@ashaautomine.com* and *bhupal@ashaautomine.com*.

12. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee's last known place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the petitioner has made attempts to effect service on the respondent and has thereby discharged its onus to effect service on the respondent.

13. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondent.

14. Since the existence of the arbitration clause is evident from a perusal of the Agreement, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899***, In re, 2023 SCC OnLine SC 1666.

15. Accordingly, Mr. Praveen Pahuja, Advocate (Mobile- + 9871270660) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

16. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.



2024:DHC:9549



17. The respondent shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law
18. The respondent shall also be at liberty to raise counter claims if any, subject to any objections that may be raised by the petitioner as regards jurisdiction / arbitrability.
19. The learned Sole Arbitrator shall be entitled to fee in accordance with IV Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
20. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.
21. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 10, 2024/sv