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

+ **ARB.P. 207/2024**

M/S MALWA AUTOMOBILES PVT. LTD.Petitioner
Through: **Mr. Avanish Kumar, Advocate.**

versus

M/S PAN INDIA INFRA PROJECTS PVT. LTD.
& ANR.Respondents
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
28.08.2024

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1. The petitioner has filed this petition, under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], for appointment of an arbitrator to adjudicate disputes between the parties under an agreement dated 19.06.2020, entitled “*Substitution and Amendment Agreement*”.
2. The parties to the agreement, *inter alia*, include the two respondents and Malwa Petrol Pump, which is stated to be a unit of the petitioner. The agreement contains an arbitration clause [Clause 12], which provides for adjudication of disputes by a sole arbitrator, and also provides that Delhi shall be the seat of arbitration.
3. Disputes having arisen between the parties, the petitioner issued a legal notice to the respondents, invoking arbitration and proposing the name of an arbitrator. No reply was received to the notice. The petitioner has, therefore, approached this Court under Section 11 of the Act.



4. Notice was issued on 19.03.2024, pursuant to which, the petitioner has filed two affidavits of service. As far as respondent No. 1 is concerned, the order of the learned Joint Registrar dated 27.08.2024 records that respondent No. 1 has been served through speed post on 31.07.2024. Although the learned Joint Registrar has recorded that respondent No. 2 remains unserved, through courier as well as speed post, Mr. Avinash Kumar, learned counsel for the petitioner, points out that attempts were made on 02.05.2024 and on 31.07.2024, to serve respondent No. 2 at its registered office by speed post. However, service was unsuccessful as no such person was found at the address.

5. As service has been attempted at the registered office of respondent No. 2 also, having regard to the provisions of Sections 12 and 20 of the Companies Act, 2013, it is unnecessary to await the appearance of the respondents any further. A copy of the master data relating to the respondent No. 2—company has been handed up in Court and is taken on record.

6. At the stage of proceedings under Section 11 of the Act, the Court is only required to examine, *prima facie*, as to whether an arbitration agreement exists between the parties. I am satisfied on the basis of the contents of the petition and documents annexed therein, as to the *prima facie* existence of the arbitration agreement. The respondents have also not appeared, despite notice, to controvert this position.

7. In view of the above, the petition is allowed and the disputes between the parties under the Agreement dated 19.06.2020, are referred to arbitration to be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 [“DIAC”].



The arbitration proceedings will be governed by the Rules of DIAC, including as to the remuneration of the learned arbitrator. DIAC is requested to nominate an arbitrator from its panel.

8. The learned arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. It is made clear that all rights and contentions of the parties are left open for adjudication by the learned arbitrator.

10. As the respondents have not appeared in these proceedings, notice of the arbitration proceedings will be served upon the respondents in accordance with the DIAC Rules.

PRATEEK JALAN, J

AUGUST 28, 2024

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