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

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Date of Decision: 12.11.2024+ **ARB.P. 1464/2024****MS AXALTA COATING SYSTEMS INDIA PVT. LTD.**

.....Petitioner

Through: Mr. Armaan Verma, Advocate.

versus

MS NCS AUTO HUB PRIVATE LIMITED

.....Respondent

Through:

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

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the parties. The disputes between the parties have arisen in the context of a Supply Agreement dated 22.11.2022 (hereinafter '*the Agreement*'). In terms of the Agreement, petitioner agreed to supply certain products to the respondent, directly or through its authorized distributors/stock list, subject to certain terms and conditions as mentioned in the Agreement.

2. It is submitted that in accordance with Clause 2 of the Agreement, the respondent nominated the petitioner as the paint supply source for paint jobs at its existing body shop at Thiruvalla, Kerala and any other new body shops



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which come up during the period of the Agreement.

3. As per Clause 5 of the Said agreement, the respondent had assured/Committed to purchase the products of the claimant from their body shops, for the entire tenure of the Agreement i.e. three years, commencing from 01.11.2022 till 31.10.2025.

4. The disputes between the parties have arisen on account of the fact that the respondent allegedly defaulted in minimum purchase commitment/s as set out in Clause 5 of the Agreement. It is further submitted that respondent was also in breach of other Clauses in the Agreement, therefore, liable to refund the balance upfront investment and discount support that was provided by the petitioner to the respondent, alongwith interest.

5. The Agreement between the parties contains an arbitration Clause which reads as under:-

“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



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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.”

6. As perusal of the arbitration agreement clearly reveals that Delhi is the seat of Arbitration. Not only has the agreement been made subject to the exclusive jurisdiction of the Court at New Delhi, the agreement clearly specifies that the venue of arbitration shall be New Delhi. As held in **BGS SGS SOMA v. NHPC Ltd.** (2020) 4 SCC 234, the choice of venue is akin to seat in the absence of any ‘contrary indicia’; the relevant observations in the said judgment are as under:-

“82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.”



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7. Disputes having arisen between the parties, an arbitration notice dated 10.07.2024 was sent by the petitioner to the respondent. The petitioner has filed the relevant tracking reports to demonstrate that the said notice was duly received by the respondent yet, no reply thereto was sent by the respondent. Consequently, the present petition has been filed.

8. Notice in the present petition was issued on 23.09.2024; the petitioner has filed the affidavit of service which brings out that the respondents have been duly served through speed post and registered post. A copy of the relevant tracking reports have been enclosed alongwith the said affidavit of service. In the circumstances, the petition has been taken up for hearing and disposal despite non-appearance of the respondent.

9. As held in *SBI General Insurance Co. Ltd. v. Krish Spinning* 2024 SCC OnLine 1754, the scope of examination in Section 11 proceedings is confined to ascertaining existence of the arbitration agreement. Since the existence of the arbitration agreement is apparent from the perusal of the Clause 11.3 of the Agreement, there is no impediment to appointing a Sole Arbitrator to adjudicate the disputes between the parties.

10. Accordingly, Ms. Prity Sharma, Advocate (Mob. No.: +91 9911028589) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties under the aforesaid agreements.

11. Respondents shall be entitled to raise appropriate objections as regards jurisdiction, if any, before the learned sole arbitrator which shall be duly considered by the learned sole arbitrator on merits

12. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as



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required under Section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.

13. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

14. Parties shall share the arbitrator's fee and arbitral costs, equally.

15. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

16. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

17. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 12, 2024/at