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

+ **ARB.P. 1481/2024**

M/S AXALTA COATING SYSTEMS INDIA PVT LTD

.....Petitioner

Through: Mr. Armaan Verma, Adv.

versus

M/S NCS AUTOCARS PRIVATE LIMITED

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

28.11.2024

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1. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes between the parties under a Supply Agreement dated 01.12.2022.
2. Notice was issued in the petition on 24.09.2024.
3. Service report has been filed. In the service report, it is stated that a physical copy of the notice has been sent to the Respondent through speed post and the same has been delivered. In fact the Order dated 12.11.2024 indicates that the learned Counsel for the Respondent had appeared on that day and submitted that he is awaiting instructions from his client. This indicates that service is complete on the Respondent and despite service *Vakalatnama* has not been filed.
4. It is stated in the petition that the Respondent had approached the



Petitioner to purchase certain items and the Petitioner has supplied those items to the Respondent under Supply Agreement dated 01.12.2022. Clause 5 of the said Agreement stipulates that a minimum purchase commitment has to be made by the Respondent to the Petitioner. It is stated that the Respondent has failed to achieve the Minimum Purchase Commitment in accordance with terms of the Supply Agreement dated 01.12.2022, hence, a notice was sent on 19.06.2024 to the Respondent wherein apart from terminating the Supply Agreement, the Petitioner also sought recovery of Rs.39,06,894/- from the Respondent. It is stated that since no reply was received from the Respondents, the Petitioner has approached this Court by filing the present petition.

5. There is no appearance on behalf of the Respondent today.

6. Clause 11 of the Supply Agreement dated 01.12.2022 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 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. Clause 11.2 of the Supply Agreement mandates that all claims under the Agreement shall be adjudicated by Courts at New Delhi. Clause 11.3 of the Supply Agreement stipulates that under the Agreement shall be adjudicated by resorting to arbitration and the venue of the arbitration shall be at New Delhi. Since the jurisdiction has been conferred to the Courts at New Delhi and the venue of the Arbitration is at New Delhi, it indicates that the parties have agreed that the seat of the arbitration would be at New Delhi.

8. In view of the fact that disputes have arisen between the parties and the Agreement contains an arbitration clause, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

9. Accordingly, Mr. Varun Singh, Advocate (Mob. No.997109902) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.



10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

11. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

12. 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.

13. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

14. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 28, 2024

S. Zakir



This is a digitally signed order.

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