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

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Date of Decision : 18.12.2024+ **ARB.P. 1506/2024****MS AXALTA COATING SYSTEMS INDIA PVT LTDPetitioner****Through: Mr. Armaan Verma, Adv.****versus****TRANS CARS INDIA PVT LTD & ANR.Respondent****Through: Ms. Yamunah Nachiar, Mr. S.
Ravishankar, Ms. Ruhini Dey, Ms.
Meghna Mukherjee, Advs. for R-1.****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 Supply Agreement dated 19.07.2017 executed between the petitioner and the respondents. As per the Agreement the petitioner was nominated as the 'paint supply source' for the respondents' existing 'body shops' at Ambattur industrial estate, as well as any new body shops established during the agreement period. The Agreement was effective from 01.07.2017 to 30.06.2020. The Agreement obligated the respondents to adhere to the 'Minimum Purchase Commitment', as per which the respondent was



required to purchase products worth ₹5,50,00,000/- over three years. It also required the petitioner to provide upfront investment and discounts amounting to ₹ 2,51,33,214/-.

3. Disputes arose between the parties when the respondents defaulted in complying with the Minimum Purchase Commitment. The respondents purchased the products worth only ₹3,76,18,462/-, resulting in a shortfall of ₹1,73,82,538/-.

4. The petitioner submits that such breach on the part of the respondents has made them liable to refund the upfront investment and discounts as per the agreement. It is submitted that the respondents were obligated to return ₹2,51,33,214/- in investment and discount support. However, despite repeated requests, the respondents have failed to settle the outstanding amount.

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

“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, India 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*



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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."

6. Disputes having arisen between the parties, the petitioner invoked arbitration *vide* communication dated 10.07.2024. However, the respondents failed to respond to the same.

7. The petitioner has, consequently, approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

8. Learned counsel for the respondent no.1 does not dispute the existence of the arbitration agreement, and accedes to the appointment of the sole arbitrator.

9. As far as respondent no. 2 is concerned an affidavit of service has been filed wherein it has been brought out that the petitioner has taken the requisite steps to serve the respondent no. 2 at its known address by speed post and courier however, the Speed post has returned with the notation "*Item Returned Addressee Left without instructions*" and the courier is returned with the notation "*Company Closed*" and "*NO such company in the give Address*". However, respondent no. 2 has been duly served via email at *cso@zulaikhamotors.com*.

10. 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



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of the attempt to deliver it. In the present case, the petitioner has taken due steps to effect service on the respondent no. 2; the courier sent to the respondent no.2 have been delivered.

11. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondent no. 2.

12. Since the existence of the arbitration agreement is *prima facie* apparent from a perusal of the Supply Agreement dated 19.07.2017, in terms of the dicta laid down by the Supreme Court in ***In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899***, 2023 SCC OnLine SC 1666 and ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532, there is no impediment to constituting an arbitral tribunal to adjudicate the disputes between the parties.

13. Accordingly, Ms. Iram Majid, Advocate (Mobile - +91 9873811531), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. The respondents shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

15. 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.

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



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17. 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.
18. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.
19. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 18, 2024/sv