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

+ **ARB.P. 294/2025**

HERO MOTOCORP LIMITED

.....Petitioner

Through: Mr. Aryan Jha, Mr. Rahul Malhotra,
Mr. Rishu Kant Sharma and Ms. Minal Kaushik,
Advocates.

versus

EASWARI AUTOMOBILES PVT. LTD.

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

19.05.2025

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1. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. Notice was issued on 12.02.2025 to the Respondent returnable on 23.04.2025 through all permissible modes, including *dasti*. Order sheets reflect that on 23.04.2025, Mr. Anubhav Tyagi, Advocate had entered appearance on behalf of the Respondent. He had sought and was granted one week time to file reply and the matter was adjourned to 09.05.2025. On 09.05.2025, there was no appearance on behalf of the Respondent. As a last opportunity, one week was granted to file the reply, making it clear that if the reply was not filed, right of the Respondent to file the same would be closed.
3. Matter has been called twice. None appeared for the Respondent on the first call and none appears on the second call. Reply has not been filed.



Accordingly, Respondent is set *ex parte*.

4. Factual matrix to the extent necessary and as averred in the petition is that Respondent approached the Petitioner for being appointed as a non-exclusive dealer of Petitioner's product at Puducherry and after discussions, Petitioner was appointed as the non-exclusive authorised dealer vide Letter of Intent dated 09.09.2010. Authorised Dealership Agreement was executed between the parties on 22.04.2011 incorporating the terms and conditions governing the dealership. The Agreement was renewed from time to time and the last renewed was on 27.02.2018. However, later, disputes and differences arose between the parties and Petitioner claims that Respondent failed to pay its outstanding dues despite repeated reminders and finally, Petitioner invoked Arbitration Clause 23.16 of the Agreement by sending a notice on 21.09.2024, proposing the name of its nominee Arbitrator and calling upon the Respondent to either agree to the proposed name or to nominate its own Arbitrator within 30 days. However, there was no response and on failure of the Respondent, this petition was filed.

5. Heard.

6. The Arbitration Clause in the Dealership Agreement is as follows:-

"a) Any dispute or difference between the Parties arising out of or in connection with this Agreement, including any question regarding its interpretation, existence, performance, validity, or termination, either during the term of the Agreement or at anytime thereafter, will be settled between the Parties through friendly consultations and negotiations.

b) If no settlement can be reached through friendly consultations and negotiations as discussed in Article 23.16 (a) of this Agreement within thirty (30) days of one Party delivering a notice of the dispute or difference to the other Party, then such dispute will be finally settled by arbitration in accordance with the provisions of Article 23.16.



c) The arbitration proceedings will be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 ("Arbitration Act").

d) The dispute or difference will be referred to a panel of three (3) arbitrators, one arbitrator to be appointed by each and the third arbitrator to be appointed by the two arbitrators appointed by the Parties. In the event that either Party fails to appoint its arbitrator within fifteen (15) days from one Party submitting a request for appointment of such arbitrators to the other Party or the two arbitrators appointed by the Parties fail to appoint the third arbitrator within fifteen (15) days from the date of appointment of the second arbitrator, the single arbitrator or the third arbitrator will be appointed in accordance with the provisions of the Arbitration Act.

e) The arbitration proceedings will be held at New Delhi and the language to be used in the arbitral proceedings will be English.

f) The prevailing Party in the arbitration proceedings will be awarded reasonable attorney's fees, if any, and all other costs and expenses in relation to the arbitration proceedings unless the arbitrators for good cause determine otherwise."

7. A plain reading of the Arbitration Clause shows that parties envisaged that the disputes arising out of the Dealership Agreement shall be referred to a panel of three Arbitrators, one to be appointed by each party and the third Arbitrator to be appointed by the two nominated Arbitrators. In the event that either party fails to appoint the Arbitrator within 15 days from one party making a request for appointment of the Arbitrator to the other, the single Arbitrator will be appointed in accordance with provisions of 1996 Act. Since Respondent has chosen to remain absent from the proceedings despite service and despite having entered appearance through a counsel, the Arbitration Clause is undisputed and there is a failure to act in terms of the Arbitration Clause. Petitioner had sent an invocation notice dated 21.09.2024 to the Respondent, proof of delivery of which is appended to the petition.



8. In light of the aforesaid facts and circumstances, this Court finds no impediment in appointing a Sole Arbitrator.
9. Accordingly, Mr. Laksh Khanna, Advocate (Mobile No. 9910900059) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties. Fee of the Arbitrator will be fixed as per Fourth Schedule of 1996 Act.
10. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.
11. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.
12. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 19, 2025/shivam