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

+ **ARB.P. 1384/2024**

HERO MOTOCORP LTD.

.....Petitioner

Through: *Appearance not given*

versus

M/S B.M. ENTERPRISES

.....Respondent

Through: **Ms. Rashi Bansal, Advocate.**

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

27.02.2025

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1. The Petitioner has approached this Court under Section 11(6) of the Arbitration & Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the Petitioner and the Respondent herein under the Authorized Dealership Agreement dated 19.04.2018.

2. It is stated that under the said Agreement, the Petitioner herein had appointed the Respondent as its authorized dealer for a period of five years, i.e. up to 19.04.2023, for sale, distribution and servicing of automobile products and parts manufactured by the Petitioner at the Respondent's premises located at Pathankot, Punjab. It is stated that disputes arose between the parties. It is stated that the Petitioner herein sent a Notice dated 09.11.2023 invoking Arbitration under Section 21 of the Arbitration Act in terms of Clause 23.16 of the Agreement. It is stated that on the date of issuance of Notice under Section 21 of the Arbitration Act, Rs.3,16,02,690/-



was due and payable by the Respondent to the Petitioner. Clause 23.16 of the Agreement, which contains the Arbitration Clause, stipulates that the Arbitral Tribunal shall consist of three members. One member each was to be appointed by the parties while the third member was to be appointed by the two chosen members and in case either party fails to appoint its nominee arbitrator, then the Arbitrator was to be appointed in accordance with the provisions of the Arbitration Act. Relevant portions of the Agreement reads as under:

“23.16 Arbitration and Dispute Resolution

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 this 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 Party 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 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.”

3. It is stated that since the Respondent failed to reply to the notice invoking Arbitration, the Petitioner has approached this Court by filing the present Petition.
4. Notice in the present Petition was issued on 09.09.2024. Despite service there is no appearance on behalf of the Respondents.
5. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the Agreement, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.
6. Accordingly, Mrs. Radhika Bishwajit Dubey, Advocate (Mobile No.9810982927) is appointed as a Sole Arbitrator to adjudicate upon the disputes between the parties.
7. 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.

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

9. 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.

10. 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.

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

SUBRAMONIUM PRASAD, J

FEBRUARY 27, 2025

Rahul