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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 22nd May, 2024***
+ **ARB.P. 24/2024**

M/S TWENTY-FOUR SECURE SERVICES PVT. LTD.

Having registered Office at:

5, Mathura Road, Jangpura-A,

New Delhi-110014

Email: legal@24securenow.com

.....Petitioner

Through: Ms. Manmeet Kaur & Mr.
Gurtej Pal Singh, Advocates.

versus

M/S COMPETENT AUTOMOBILES COMPANY LIMITED

Having registered office at:

F-14, Competent House, Middle Circle,

Connaught Place, New Delhi-110001

Email: legal@competent-maruti.com

.....Respondent

Through: Mr. Priyesh Mohan Srivastava,
Advocate.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner seeking appointment of Arbitrator.
2. Briefly stated that the petitioner is engaged in the business of providing seamless security solutions. The respondent approached the petitioner to avail its services for deploying security personnel at its various



dealership sites. Therefore, the Services Agreement dated 20.11.2020 was entered into between the petitioner and the respondent for providing round the clock security arrangement for guarding the dealership sites of the respondent.

3. As per Clause 1A of the Services Agreement dated 20.11.2020, the term of the Agreement was one year from 16.08.2020 to 15.08.2021 and thus, the Services Agreement dated 20.11.2020 was further extended for another term commencing from 16.08.2021.

4. The respondent *vide* its E-mail dated 02.12.2022, decided to terminate the security services of the petitioner and thus, it extended a month's notice to the respondent terminating the Services Agreement dated 20.11.2020 w.e.f. 31.12.2022 and it was stated that the payments till 31.12.2022 shall be settled by the respondent. The petitioner *vide* E-mail dated 14.12.2022 acknowledged the termination of the Agreement. *Vide* E-mail dated 20.12.2022, the petitioner informed the respondent withdrew its services from the sites of the respondent w.e.f. 31.12.2022 and requested to release the pending payments/arrears in terms of the Agreement.

5. The respondent *vide* its E-mail dated 31.12.2022 revoked the termination of security services of petitioner and requested the petitioner to continue its services till 31.01.2023. The petitioner *vide* its E-mail dated 31.12.2023 agreed to the extension of its services, subject to clearance of 75% of the arrears by 05:00 P.M. on 31.12.2022, failing which, the requisite security services would be withdrawn by 01.01.2023. However, the respondent failed to pay arrears and thus, the petitioner withdrew its security personnel from the sites of respondent on 01.01.2023.

6. Despite the various correspondences and reminders sent by the



petitioner, the respondent failed to clear the pending payments and arrears.

7. The petitioner *vide* Notice dated 03.06.2023 invoked the arbitration. The respondent *vide* Reply dated 01.07.2023 outrightly refused the existence of disputes between the parties beyond 16.08.2022, however, nominated Justice H.R. Malhotra (Retd.) as the Arbitrator.

8. The petitioner *vide* its Reply dated 12.09.2023 to the Reply dated 01.07.2023 informed that it is still willing to amicably settle the disputes and also informed that in view of the Arbitration Agreement, a third Arbitrator can be nominated by the respective Arbitrators. However, despite various reminders/e-mails, no action has been taken by the respondent in this regard.

9. Therefore, the present petition has been filed on behalf of the petitioner seeking appointment of an Arbitrator in addition to the Arbitrators nominated by the parties.

10. The present petition has been **contested on behalf of the respondent** on the ground that as per the Arbitration Clause, there has to be a panel of three Arbitrators and the respondent has already proposed one name and the petitioner's proposing the name of other Arbitrator, then they both would appoint the third Arbitrator.

11. It is submitted that the present petition is premature and is against the procedure of appointment of Arbitrator as agreed between the parties.

12. It is further submitted that the present petition is premature because it could have been invoked only where the parties fail to follow the procedure as contemplated or where the parties or the two Arbitrators fail to reach an agreement expected of them under the procedure or the person, including an institution, fails to perform any function entrusted to him or it under that procedure.



13. It is also submitted that since the procedure agreed between the parties has yet not been exhausted, the present petition is premature.

14. It is asserted that in the matters of Arbitrator, the precedence should be given to the party autonomy, for which reliance has been placed on the decision in Centrotrade Minerals & Metal Inc. vs. Hindustan Copper Ltd., (2017) 2 SCC 228.

15. It is, therefore, submitted that the present petition is liable to be dismissed.

16. **Submissions heard.**

17. Indisputably, the arbitral disputes have arisen between the parties and there is also Clause 7 in the Services Agreement dated 16.08.2021 provides for referral of disputes to the arbitration. The procedure for appointment of the Arbitrator is also stipulated therein. The relevant part of Clause 7 reads as under: -

“..... dispute or difference by the either Party then the matter will be referred to arbitration by Sole Arbitrator where parties agree on the appointment of such arbitrator but where parties are unable to agree on such sole arbitrator, the matter will be referred to arbitration by three (3) arbitrators in which event, each party is to appoint an arbitrator and two arbitrators appointed by the Parties shall appoint the third arbitrator....”

18. From Clause 7 itself it is evident that the sole Arbitrator has been contemplated by the parties to be appointed and only if there is no consensus between them, then they may go for a panel of three Arbitrators, out of which, one each shall be the choice of the parties and the two Arbitrators so appointed shall choose the umpire Arbitrator.

19. It is also evident from the Clause 7 of the Services Agreement dated



16.08.2021 that it contemplates appointment of a sole Arbitrator.

20. From the submissions made in the petition and the contentions of the respondent, it is evident that they have not been able to agree on the name of the Arbitrators. Therefore, it would be incorrect to say that the present petition is premature or against the agreed procedure by the parties.

21. Because the parties have not been able to arrive at the name of an Arbitrator, the present petition is not premature and is maintainable under the law.

22. In Union of India (UOI) vs. Singh Builders Syndicate (2009) 4 SCC 523 the High Court rejected the contention on behalf of the Government that the Court was not vested with any powers to appoint a Sole Arbitrator in distinction to the Arbitration Agreement which provided for the Tribunal of three members. The Apex Court upheld the order of this Court appointing a Sole Arbitrator by observing that the appointment of the Sole Arbitrator was valid.

23. In view of the submissions made as well as Clause 7 of the Services Agreement dated 16.08.2021 which provides for arbitration and the petitioner has raised the arbitrable disputes and without prejudice to the rights and contentions of the parties, the present petition is allowed. Mr. Sidharth Sharma Adv. Mobile No. 7400111111, is hereby appointed as the Arbitrator to adjudicate the disputes between the parties.

24. The parties are at liberty to raise their respective objections before the Arbitrator.

25. The fees of the learned Arbitrator would be fixed in accordance with the Fourth Schedule of the Act, 1996 or as consented by the parties. 14. This is subject to the Arbitrator making necessary disclosure as under Section



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12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.

26. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre, Delhi High Court.

27. The parties are directed to contact the Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.

28. Accordingly, the present petition is disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 22, 2024
S.Sharma