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

Date of Decision: 6th December, 2021

\+ **ARB. A. (COMM.) 73/2021, I.As. 16020/2021, 16021/2021.**

HONDA CARS INDIA LTD. & ANR. ..... Appellants

Through: Mr. Jagdev Singh, Advocate with Mr. Sachin Sawi, Advocate.

versus

POTHEN VEHICLES AND SERVICE PVT. LTD. .....Respondent

Through: Mr. Ashish Dholakia, Senior Advocate with Ms. Padma Priya, Mr. Susheel Cyriac and Mr. Ankur S. Kulkarni, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA HYBRID MODE]

SANJEEV NARULA, J. (Oral):

1. The present appeal filed under Section 37(2) of the Arbitration and Conciliation Act, 1996 [*hereinafter,* ***"the Act"***] impugns the Order dated 11th October, 2021 passed by the learned Sole Arbitrator under Section 17 of the Act, wherein an application filed by the Respondent – Pothen Vehicles and Services Private Limited (Claimant therein) [*hereinafter,* ***"PVSPL"***] against the Appellant – Honda Cars India Private Limited [*hereinafter,* ***"Honda"***] was allowed in part.

FACTS

2. The facts of the case, in brief, are as follows:

2.1. Honda appointed PVSPL as its non-exclusive dealer under a Dealership Agreement dated 23rd February, 2014 – which was renewed on a yearly basis. Honda contends that in September 2019, PVSPL started defaulting on its payments for inventory funding. Consequently, its bank partially withheld the inventory funding limits due to overdues. This led to the stoppage of wholesale of products by Honda to PVSPL.

2.2. Several rounds of meetings were held between the parties to resolve the issues, but without success. Then *vide* e-mail dated 22nd February, 2021, Honda instructed PVSPL to infuse more funds in its Dealership by 31st March, 2021, failing which, the Dealership Agreement may not be renewed. PVSPL was unable to comply, and consequently, Honda informed PVSPL that the Dealership Agreement had come to an end with efflux of time on 31st March 2021.

2.3. Aggrieved by such termination, PVSPL approached this Court seeking interim measures under Section 9 of the Act, and also sought appointment of an Arbitrator under Section 11 of the Act. The Court *vide* common order dated 20th April, 2021, appointed the Arbitrator and directed that the petition under Section 9 be treated as one under Section 17 of the Act by the learned Arbitrator so appointed.

ARBITRAL ORDER

3. PVSPL filed an application under Section 17 of the Act before the Arbitrator, seeking: (i) an order directing Honda to continue the Dealership Agreement and (ii) a direction to Honda to permit PVSPL to continue with

the operation of the workshop, permit the after-sales service of cars sold by it, and not to discontinue the supply of spare parts or disrupt other essential software support required in the workshops.

4. The learned Arbitrator after examining the terms and conditions of Dealership Agreement and the applicable laws, rejected the first prayer, holding that the direction to continue the Dealership Agreement cannot be entertained. With respect to the second prayer, the learned Arbitrator made the following observations:

> *"9.8 The second prayer made by the Claimant will now be considered i.e. to direct the Respondent to continue supplies against cash purchase, and that the Claimant should not be obstructed from continuing with the workshops operations, and after sale services at its workshops, and not discontinue supply of spare parts or other essential software support to the Applicant.*
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> *The Respondent placed reliance on clause 22.1 (i) of the Dealership Agreement, which reads as under:*
>
> > *"(i) In such case, the Company **may** direct the dealer to extend service facility to the existing Customer for a period of six (6) months from the date of termination of the Agreement. If the Dealer fails to extend the service facility, then the Company shall claim expense from the Dealer which it may incur for rendering such service. The Parties herein agree that extension of service facility by the Dealer shall not in any manner constitute renewal or extension of Dealership Agreement."*
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> *The Claimant has made huge investments and has incurred expenses for the establishment of the showrooms and workshops which are customized for 'Honda' vehicles. Further, staff/labour employed at the workshops would be rendered jobless. The customers who have purchased Honda vehicles through the Claimant, would be seriously inconvenienced if the workshops are shut down, because of non-supply of spare parts. In the interests of justice, the Tribunal is of the view that this prayer should be allowed during the pendency of the Arbitration proceedings.*
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> *The Respondent is directed to provide spare parts and other software support, against cash purchase by the Claimant, which may be required for running the workshops set up exclusively for Honda vehicles.*
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> *Furthermore, clause 22.1 (i) of the Dealership Agreement protects the right of the Respondent company since it clearly provides that the extension of service facility shall not constitute renewal or extension of the Dealership Agreement."*

5. Honda is aggrieved with the afore-noted directions *qua* the second prayer and has impugned the order to that limited extent by way of the present petition.

CONTENTIONS OF THE PARTIES

6. Mr. Jagdev Singh, counsel for Honda, argues that the afore-noted

directions could not have been issued by the learned Arbitrator, since there is no contractual provision enabling PVSPL to seek such relief. He further argues that the reliance made by the learned Arbitrator upon Clause 22.1(i) of the Dealership Agreement is misconstrued. The continuation of the arrangement beyond termination can only be at the discretion of Honda, and that too, only for a period of six months. It is further argued that the direction given by the learned Arbitrator for giving software support would amount to allowing PVSPL to use Honda's proprietary software. The same contains sensitive data which cannot be accessed by PVSPL in the absence of a subsisting Dealership Agreement. Such supply, as directed by the learned Arbitrator, is contrary to their business model.

7. On the other hand, Mr. Ashish Dholakia, Senior Counsel for PVSPL, defends the impugned order and submits that the Dealership Agreement specifically contemplates continuation of arrangement beyond the stipulated term, under Clause 22.1(i), and therefore, reliance placed thereon is justified. He further submits that no prejudice would be caused to Honda because, in terms of the impugned order, PVSPL would be making purchases in cash. Additionally, he states that the Arbitrator considered the long-standing relationship between the parties, which lasted for a long period of more than eight years. After taking note of the nature of disputes, as well as the grave prejudice likely to be caused to the customers, she rightly exercised her discretion to grant interim measures. Regardless, such measures would only apply during the pendency of the arbitration proceedings that are likely to be concluded shortly. Mr. Dholakia explains that PVSPL has over three hundred employees working at its behest and COVID-19 pandemic had severely hit the automobile industry, including PVSPL, and therefore irreparable harm

would be inflicted upon PVSPL, if Honda were to cease providing them with the spare parts. He argues that given such dire circumstances, the Court should not interfere with the Order of the learned Arbitrator.

ANALYSIS AND FINDINGS

8. Having considered the submissions of the parties, the Court is of the opinion that the direction contained in paragraph 9.8 as extracted above is in conflict with the opinion expressed by the learned Arbitrator in the immediately preceding paragraph of the impugned Order, wherein the first prayer seeking continuation of Dealership Agreement was rejected by the learned Arbitrator. Although the learned Arbitrator had specified that the extension of service facility shall not constitute a renewal or extension of the Dealership, yet, directions have been issued beyond the term of the Dealership Agreement which has expired by efflux of time.

9. The learned Arbitrator has rightly concluded that the Dealership Agreement cannot be directed to be continued once expired, except by mutual consent. Having arrived at this conclusion, the learned Arbitrator could not have directed Honda, in the same breath, to continue to supply spare parts and other essential software support to PVSPL. Significantly, the Court is of the view that in the absence of a contractual right in favour of PVSPL to seek the relief granted, post expiry of the Dealership Agreement, the learned Arbitrator could not have issued such directions. The obligation to supply spare parts and software support subsisted only during the term of the Dealership Agreement, and not beyond. Once the Dealership Agreement is determined, Honda is no longer bound by the terms contained in Clause 22.1(i) therein. The impugned directions amount to compelling Honda to adopt an arrangement that is

contrary to their business model.

10. Further, the contractual stipulation under Clause 22.1(i) is only for a limited period of six months from the date of termination of the Dealership Agreement. This period, in any event, has evidently lapsed. Regardless, by relying upon this Clause, PVSPL cannot insist on the supply of spare parts as a matter of right. Particularly, the right to continue vested squarely with Honda. Moreover, as is evident from the existence of the expression "*may*", it was purely a discretionary right which could not have been sought to be enforced by PVSPL. The commercial wisdom of a party to not renew its contractual relationship cannot be substituted or faulted with.

11. Pertinently, what has weighed with this Court is the fact that today PVSPL is no longer an authorised dealer of Honda. Customers would walk into the workshops of PVSPL under the mis-impression that they are getting their vehicles serviced by an authorised dealer of Honda. Any car servicing done by an unauthorised service centre, would not only be unfair to the customers, but as rightly pointed out by Honda, would entail violation of the terms of warranty of the vehicles and could cause harm to the customers. Besides, Honda emphasises that there is no channel of sale of spare parts, except through its authorised dealers.

12. During the course of arguments, Mr. Dholakia has pointed out that Honda, in the present appeal, has observed that its spare parts could be purchased from other authorised dealers – thereby suggesting that the plea of lapsing of warranties is completely mis-founded. Regardless, this contention is of no consequence. Whether PVSPL would have avenues for purchase of spare parts from other sources is a question that does not arise for consideration in the present appeal. Nevertheless, by virtue of the order of the

learned Arbitrator, the servicing of vehicles undertaken by PVSPL under the arrangement anticipated can certainly entail serious consequences and repercussions for Honda's business.

13. In view of the above, the Court finds merit in the present appeal and accordingly, the direction given by the learned Arbitrator in paragraph 9.8 is set aside.

14. The present appeal is allowed in the above terms.

15. Pending applications are also disposed of.

SANJEEV NARULA, J

DECEMBER 6, 2021
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