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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **ARB.P. 682/2025**

JSW MG MOTOR INDIA PVT. LTD.
CIN NUMBER:- U34100HR2017FTC072429
REGISTERED OFFICE AT: -
1OTH FLOOR, MILESTONE EXPERION CENTRE,
32ND A VENUE,
SECTOR 15 PART II, GURUGRAM,
HARY ANA - 122001

.....PETITIONER

.

(Through: Mr. Zeeshan Hashmi, Mr. Ankit Parashar, Ms. Jyoti Rajpurohit and Ms. Mitali Yadav, Advocates..)

VERSUS

M/S TRISTAR AUTO AGENCIES (VIZAG) PVT. LTD.
CIN NUMBER:- U34102AP2005PTC047666
REGISTERED ADDRESS AT: -
D. NO. 38-13-54, LAKSHMI NAGAR, NH-5 ROAD,
MARRIPALEM, VISAKHAPATNAM,
ANDHRA PRADESH - 530018

(Through: Mr. Ankit Jain,Sr. Adv. with Mr.K.P. Sundar Rao, Mr. Udesh Puri, Mr.Eish Kesharwani, Advocates..)

% Reserved on: 06.11.2025
Pronounced on: 18.11.2025

J U D G M E N T

The petitioner, an automobile company, has filed the instant petition against the respondent, a company engaged in automobile dealership, under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter "**Arbitration Act**"), for the appointment of a sole arbitrator to adjudicate upon their *inter se* disputes.

2. The petitioner has pleaded that in pursuance of a letter of intent dated 29.10.2018, a dealership agreement dated 04.11.2019 was entered into between the parties, which was determined by the lapse of time. Thereafter, another dealership agreement dated 17.07.2023, was entered into between the parties (hereinafter "**said Agreement**"), in relation thereto certain disputes have arisen.

3. Consequently, owing to the respondent's breaches, the petitioner alleges, that it had to terminate the said Agreement *vide* termination letter dated 29.11.2024. This letter of termination was challenged by the respondent in January, 2025 by filing a suit before the Principal District Judge, Visakhapatnam, registered as O.S. No. 6 of 2025, seeking, *inter alia*, a declaration that the said termination letter is non-est in law (hereinafter "**said Suit**").

4. In the said suit, the petitioner herein filed an interim application dated 20.01.2025, registered as I.A. No. 470 of 2025, under Section 8 of the Arbitration Act, seeking the dispute therein to be referred for arbitration in terms of the arbitration clause contained in the said Agreement. During the

pendency of the said interim application, on 01.05.2025 the present petition under Section 11 of the Arbitration Act came to be filed for the appointment of a sole arbitrator to adjudicate the *inter se* disputes between the parties.

5. While the present petition was pending, I.A. No. 470 of 2025 came to be decided by the Principal District Judge, Visakhapatnam *vide* order dated 27.10.2025 (hereinafter "**PDJ's Order**"), whereby the application filed by the petitioner under Section 8 of the Arbitration Act came to be rejected.

6. The present petition, thereafter, was finally heard and the authorities relied upon by the parties were carefully scrutinised.

7. Learned counsel for the petitioner has submitted that there are disputes which have arisen between the parties in relation to the said Agreement, which needs to be adjudicated by an arbitrator, in terms of Clause 63 of the said Agreement. He further submits that the PDJ's Order does not affect this Court's jurisdiction, neither does it affect the right of the petitioner to seek a reference for arbitration, as the disputes before the PDJ were distinct from those sought to be referred in the present petition.

8. Per contra, learned counsel for the respondent submitted that the said Agreement itself does not exist, and the respondent's signatures, if any, on the said Agreement are forged/fabricated/non-est in law. He futher submits that the arbitration clause under Clause 63 of the said Agreement does not, in actuality, constitute an arbitration agreement as it does not manifest an intent of the parties to settle their disputes for arbitration.

9. In ***Anil v. Rajendra***,[1] the issue which fell for the adjudication of the Court was whether a party can invoke Section 11(6) of the Arbitration Act after a judicial authority has declined a referral under Section 8 of the Arbitration Act. The Supreme Court found the said exercise to be impermissible owing to issue estoppel as also *res judicata*. The material portion of the judgement reads as under:

> *"9. The facts as narrated by us hereinbefore would show that the application filed by the respondents herein under Section 11 of the Act is nothing but an abuse of process. The partnership firm itself is the plaintiff in the suit. The dispute between the parties is the subject of the suit. Precisely for that reason, the appellants sought the matter to be referred to the arbitrator. That was opposed by the respondents. When the suit is at the final stage, the respondents have sought appointment of an arbitrator under Section 11(6) of the Act.* ***Having approached the civil court and having opposed the reference to arbitration under Section 8(1) of the Act and the decision of the court in that regard having become final, the respondents cannot invoke jurisdiction under Section 11(6) of the Act; it is hit by the principle of issue estoppel.***
>
> *XXX XXX XXX*
>
> *12. In the suit instituted by the firm and some of the respondents, the order passed by the civil court that it was well within its jurisdiction to try the suit, despite the objection regarding the existence of a clause for arbitration, has become final.* ***Thereafter, Section 11(6) jurisdiction of the Chief Justice cannot be invoked by either party. The principle of res judicata will also be attracted in such a case.***
>
> *XXX XXX XXX*

[1] (2015) 2 SCC 583.

> *15. The principles as discussed above on res judicata have been consistently followed by this Court. And the recent judgments in that regard are in Subramanian Swamy v. State of T.N. (2014) 5 SCC 75; (2014) 3 SCC (Civ) 134] and in Surjit Singh v. Gurwant Kaur [(2015) 1 SCC 665].* ***Thus, once the judicial authority takes a decision not to refer the parties to arbitration, and the said decision having become final, thereafter Section 11(6) route before the Chief Justice is not available to either party****."*
>
> *[Emphasis supplied]*

10. This Court in ***Antique Art Export Pvt. Ltd. v. United India Insurance Company Ltd.***[2] applying the dictum of the Supreme Court in ***Anil v. Rajendra*** (supra), held that the principles of *res judicata* squarely apply while adjudicating an application under Section 11 of the Arbitration Act. The material portion of the judgement reads as under:

> *"76. So it follows, the High Court while exercising judicial function under Section 11(6) can determine the issue of maintainability of a petition on any ground including on territorial jurisdiction/res judicata, etc. and the same is clear from the judgement of Anil v. Rajendra, (2015) 2 SCC 583 : (2015) 2 SCC (Civ) 147],* ***that the principle of res judicata shall be applicable to a petition under Section 11. Otherwise, it would mean, despite a petition under Section 11(6) not maintainable, like, on the ground the High Court lacks the territorial jurisdiction as the seat of arbitration is elsewhere; the petition needs to be entertained. Such cannot be the position in law. This Court can, if a petition is not maintainable, shall be within its right to dismiss the petition at the threshold****.*

[2] 2023 SCC OnLine Del 1091.

> *77. The plea of Mr Kaushik that, while appointing an arbitrator, there is no decision on merits and as such, res judicata shall not be applicable, is also without merit, inasmuch as the proceedings in United India Insurance Co. (P) Ltd. v. Antique Art Exports (P) Ltd., [United India Insurance Co. Ltd. v. Antique Art Exports (P) Ltd., 2019] 5 SCC 362 : (2019) 2 SCC (Civ) 785], arose from a petition under Section 11(6) of the Act filed before this Court. The Supreme Court by a detailed judgment by holding that no arbitrable dispute subsists between the parties, has set aside the order of this Court appointing the arbitrator.* ***Such a finding is binding between the parties and any subsequent litigation shall be barred by principle of res judicata. Accordingly, these petitions need to be dismissed at the threshold****."*
>
> *[Emphasis supplied]*

11. Similarly, in the case of ***Surender Bajaj v. Dinesh Chand Gupta and Ors.***,[3] this Court dismissed a petition under Section 11 of the Arbitration Act on the ground of *res judicata* as the petitioner's application under Section 8 of the said Act had been rejected. The material part of the judgement reads as under:

> *"14. Though various submissions have been made by the learned counsel for the petitioner to contend that such a finding is erroneous and does not bind this Court, however, so long as the order dated 08.04.2024 is not set aside or interfered with, the Court is of the opinion that in the instant application, the similar prayer cannot be repeated to refer the parties to the Arbitrator as the same would amount to res judicata.*
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> *15. Under the aforesaid circumstances, the Court is not inclined to accept the prayer made in the instant application.*

[3] 2025 DHC 7387.

16. Accordingly, the instant petition stands dismissed."

12. The relevant clauses of the said Agreement upon which the petitioner relies upon may now be considered.

13. Chapter XI titled "Dispute Resolution", contains Clause 63 named "Arbitration", it reads as under:

> *"63. Arbitration*
> *63.1 If any or all disputes, controversies, proceedings or claims of whatever nature arising out of or in any way relating to this Agreement, the breach, termination, non-performance, interpretation or validity or the information referred in Clause 62.2 is not resolved through negotiation within fourteen (14) days of the same having been referred, then either Party, by proving a written notice to the other Party**, may refer any or all disputes, controversies, proceedings or claims to binding arbitration under the Arbitration and Conciliation Act, 1996 as amended from time to time**.*
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> *63.2 The binding arbitration under Clause 63.1 shall be conducted by a sole arbitrator, who shall be mutually appointed by the Parties. The fee of the sole arbitrator shall be determined as per the Fourth Schedule of the Arbitration and Conciliation (Amendment) Act, 2015 and/or future amendments in the Arbitration and Conciliation Act, 1996.*
>
> *63.3 The seat and venue of the arbitration shall be New Delhi.*
>
> *63.4 The language of the arbitration, the award, and all documents filed or submitted in connection therewith shall be English. A written transcript of the proceedings shall be made and furnished to the Parties.*
>
> *63.5 The arbitration award shall be reasoned, final and binding on all the Parties thereto."*
>
> *[Emphasis supplied]*

14. The material part of PDJ's Order reads as under:

> *"23. As per clause No. 63.1 of Ex. A1, the referring of dispute to arbitration is optional, but not mandatory, in view of the terminology, i.e., '...may refer any or all disputes, controversies, proceedings or claims to binding arbitration under the Arbitration and Conciliation Act, 1996 as amended from time to time.' By following the Judgment of the Hon'ble Supreme Court in BGM & M – RPL – JMCT (JV) v. Eastern Coal Fields Limited, mentioned supra, this Court is of the opinion and this Court comes to conclusion that the said Clause No. 63.1 of Ex. A1 does not create any arbitration agreement and hence, the dispute between both parties cannot be referred to arbitration and consequently, this Interlocutory Application is liable to be dismissed in the interest of justice."*

15. A bare perusal of the above-extracted paragraph of the PDJ's Order would reveal that in a judicial proceeding between the parties to the present suit, an order by a court of competent jurisdiction, has been passed. The said order gives a finding on the nature of the Clause, on the strength of which a reference for arbitration is being sought by the petitioner. The finding in the PDJ's Order is that Clause 63 does not constitute an arbitration agreement.

16. The PDJ's Order has not been set aside in appeal or any other appropriate proceeding, it therefore applies, to, and binds, the parties to the instant petition. It is, therefore, not open to the petitioner to take a stand contrary to the finding rendered in the PDJ's Order.

17. The submissions of the learned counsel for the petitioner that the expression "*may refer any or all disputes…to binding arbitration*" as it appears Clause 63.1, needs to be read in the context in which it appears, and that if the

clauses pertaining to Dispute Resolution are read as a whole, the same would evince a concretised intent of the parties to refer the disputes between them for arbitration, cannot be adjudicated upon, or gone into by this Court. Doing so would lie at the teeth of the PDJ's Order, with which the parties to the present petition are bound by.

18. It is important to clarify that while the PDJ's Order does not bind this Court, the fact of there being a judicial order operating, and being binding, upon the parties to the present dispute needs to be respected. But for this, any party that is a subject of an adverse judicial order would knock on the doors of different Courts seeking the same relief. Allowing the same would be wholly inconsistent with the orderly administration of justice.

19. The submission of the petitioner that the respondent committed multiple breaches of the said Agreement, them being, *inter alia* — (1) services not being in consonance with the standards agreed to between the parties; (2) discrepancies in the sale and invoicing of the vehicles; and (3) taking of incentives/benefits under the garb of inflated and untrue performance; and the dispute pertaining to the said breaches being distinct from those under consideration in PDJ's Order is also found to lack merit.

20. The issue, at its core, in PDJ's Order pertained to the interpretation of Clause 63 of the said Agreement, and whether it constitutes an arbitration agreement. The finding in the said order cannot be made nugatory and otiose by merely seeking a reference of disputes different from those covered by the said order.

21. In light of the discussion above, it is clear that the present petition is barred by *res judicata* and the petitioner herein, being bound by the PDJ's Order, is prevented from seeking the present reference for arbitration owing to issue estoppel.

22. The present petition is dismissed. Ordered accordingly. Pending applications if any stand disposed of.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 18 , 2025
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