



2025:DHC:11739



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

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Date of Decision: 22.12.2025

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CM(M) 2482/2025, CM APPL. 81014/2025 & CM APPL. 81013/2025

RITA KALITA

.....Petitioner

Through: Mr. Riju Raj Singh Jamwal, Ms. Madhusmita Bora and Mr. Bijoy Kumar Pradhan, Advocates.

versus

HERO MOTOCORP LIMITED

.....Respondent

Through: Mr. Rahul Malhotra, Ms. Padamja Sharma and Mr. Aryan Jha, Advocates.

CORAM: JUSTICE GIRISH KATHPALIA**ORDER (ORAL)**

1. Petitioner/non-claimant before the Arbitral Tribunal has assailed order dated 10.12.2025 of the learned Arbitral Tribunal, whereby her application under Section 16 of the Arbitration and Conciliation Act, 1996 was dismissed.

2. Learned counsel for respondent/claimant appearing on advance



intimation accepts notice.

3. Keeping in mind the nature of the proceedings, at request of learned counsel for both sides, I have heard them finally.

4. Broadly speaking, the present petitioner/non-claimant filed an application under Section 16 of the Arbitration and Conciliation Act, 1996, contending that the relations between the parties were governed by only a letter of intent dated 31.10.2002 and there was no dealership agreement dated 13.03.2018 or 25.07.2003, which dealership agreements contain the arbitration clause. The petitioner/non-claimant contended that since jurisdiction of the Arbitral Tribunal depends upon existence of a valid arbitration agreement, and the same was not recorded in the letter of intent, Arbitral Tribunal has no jurisdiction. The learned Arbitrator, after detailed discussion and analysis of the material on record took a view that the issue as to whether the dealership agreements dated 13.03.2018 and 25.07.2003 do not bear signatures and seals of the parties would be a matter of trial and consequently, the arbitral proceedings cannot be terminated under Section 16 of the Act without giving the respondent/claimant an opportunity to prove the said dealership agreements.

5. Learned counsel for petitioner/non-claimant in all fairness admits that the issue as regards existence and validity of the dealership agreements needs to be addressed through trial, but further submits that having observed this, the learned Arbitral Tribunal ought to have kept the application under Section 16 of the Act pending instead of dismissing the same.



6. On the other hand, learned counsel for respondent/claimant contended that earlier, while referring the dispute to Arbitrator, the learned Single Judge of this Court in order dated 06.12.2024 (*Annexure P-12*) took a view that *prima facie* there exists an agreement between the parties and the issue whether there is a valid arbitration agreement, should be decided by the Arbitrator. Therefore, according to learned counsel for respondent/claimant, the issue of existence and validity of the arbitration agreement has to be decided after full dress trial.

7. In the course of further discussion, the issue came up as to whether the question of jurisdiction of the Arbitral Tribunal be treated as preliminary issue and after recording limited evidence of both sides, the Arbitrator be called upon to pass fresh order under Section 16 of the Act or the Arbitrator should conduct complete proceedings of recording evidence from both sides and thereafter take a view under Section 16 of the Act.

8. In this regard, judgment of a coordinate bench of this court in the case of ***Surender Kumar Singhal & Ors. vs. Arun Kumar Bhalotia & Ors.***, 2021 SCC OnLine Del 3708, cited by learned counsel for petitioner himself conveys the answer. According to paragraph 31(iv) of the said judgment, the learned Single Judge of this court took a view that “*detailed evidence needs to be led both written and oral, then after the evidence is concluded, the objections under Section 16 would have to be adjudicated first before proceeding to passing of the award.*” I am in respectful agreement with the



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view taken by the learned coordinate bench.

9. In view of above discussion, the impugned order is upheld and the petition is disposed of, directing the learned Arbitral Tribunal to record complete evidence from both sides and thereafter, take a decision on objection under Section 16 of the Act, before proceeding further on the merits of the dispute. Pending applications also stand disposed of.

10. At request of learned counsel for both sides, it is made clear that what was held by the impugned order was that “*at this preliminary stage, the application filed under Section 16 of the Arbitration and Conciliation Act, 1996 is not maintainable*”, therefore, the final decision on the issue under Section 16 of the Act is yet to be taken on the basis of evidence to be adduced by both sides.

**GIRISH KATHPALIA
(JUDGE)**

DECEMBER 22, 2025/ry