

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.617 of 2019

M/s.Prithvi Tractors,
rep by its Partner
Mr.Veeranna, S/o.Mallappa Nidagundi,
Near Green Garden Cross,
Gokul Road, H.M.Kalwad Complex,
Hubli, Karnataka-580 030. .. Petitioner

Vs.

M/s.Same Deutz-Fahr India Pvt. Ltd.
rep. by its Managing Director,
72 M, SIPCOT Industrial Complex,
Ranipet, Tamil Nadu-632 403. .. Respondent

* * *

Prayer : Petition filed under Section 11(6)(c) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate the disputes arising out of the Dealership Agreement dated 01.01.2011 between the petitioner and the respondent.

* * *

For Petitioner : Mr.V.Srikanth

For Respondent : Ms.P.R.Vandana
for M/s.Surana & Surana

ORDER

This Original Petition is filed seeking for appointment of a Sole Arbitrator to adjudicate the disputes arising out of the Dealership

Agreement dated 01.01.2011 between the petitioner and the respondent.

2. The petitioner claimed to have signed a Dealership Application of the respondent Company in the year 2009 and thereafter, the parties entered into a Dealership Agreement dated 01.01.2011. The petitioner paid various amounts by way of Demand Drafts to the respondent and issued blank signed cheques, besides furnishing Bank Guarantee for a sum of Rs.7,00,000/-. It is alleged that though the petitioner was acting in good faith and discharging their commitment efficiently and professionally, the respondent has been exploiting the marketing strategies and violating the agreement conditions. The petitioner incurred more than Rs.2 Crores for providing infrastructure for the show room etc., in addition to the other operational expenses at the inception. However, the respondent also appointed a few other dealers for the same District to the detriment of the petitioner and also in violation of the Dealership Agreement.

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3. According to the petitioner, since the respondent cheated them, a private complaint was lodged before the J.M.F.C.-I, Hubli, and the same was taken on file in P.C.No.201 of 2014 in C.C.No.980 of 2016. The respondent filed Crl.O.P.No.1000349 of 2015 before the

Karnataka High Court seeking to quash the said criminal proceedings, wherein, the respondent stated that they have nominated a retired Judge of this Court as the sole Arbitrator and it is purely a civil case with arbitration remedy. Based on the said submissions, the Karnataka High Court quashed the charge sheet on 04.11.2016.

4. It is the case of the petitioner that they have been approaching the learned Arbitrator alleged to have been nominated by the respondents from 21.11.2016, who had later informed them that without obtaining consent, the respondent nominated him and the learned Arbitrator did not accept the arbitration. According to the petitioner, since the respondent misled the Karnataka High Court, they filed I.A.No.1 of 2017 in CrI.O.P.No.1000349 of 2015 to recall the order dated 04.11.2016, which was allowed.

5. In such circumstances, the petitioner filed C.M.P.No.100009 of 2017 under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, "the A & C Act") before the Karnataka High Court. The said petition was disposed of by the Karnataka High Court on 13.11.2018, as not maintainable in terms of Clause 14(h) of the Agreement, while giving liberty to the petitioner to submit the same before the jurisdictional Court. Hence, the petitioner before this Court.

6. Heard both sides. Though the learned counsel for the respondent initially opposed the appointment of an Arbitrator, after some arguments, he is agreed for the appointment of an Advocate of this Court as the Arbitrator.

7. Considering the submissions of the learned counsels for the parties, this Court appoints Hon'ble Mr.Justice K.Chandru, a retired Judge of this Court residing at No.4-B, "Kanchana", 78, St. Marys Road, Abhiramapuram, Chennai-600 018, (Phone No.044-24990139) as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

8. The Original Petition is ordered accordingly, leaving the parties to bear their own costs.

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Index : Yes / No

Internet : Yes

Speaking Order/Non-Speaking Order

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PUSHPA SATHYANARAYANA, J.

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