

THE HIGH COURT OF JUDICATURE AT MADRAS

Date 15.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.630 of 2020

TVS Motor Company Limited,
Regd. Off. at “Chaitanya”, No.12,
Khader Nawaz Khan Road,
Nungambakkam, Chennai – 600 006.

... Petitioner

Versus

Mr.V.Sanjay
Proprietor M/s.Janatha Motors,
No.147-A, Chengam Road,
Thiruvannamalai, Tamil Nadu
PIN 606 603.

... Respondent

PRAYER : Petition filed under Section 11(5) of Arbitration and Conciliation Act, 1996 to appoint an Arbitrator from the panel of nominees suggested by the petitioner to the respondent vide Notice dated 28.10.2020, in accordance with Clause 27 of the Authorized Main Dealership Agreement dated 01.04.2018 or such other person as deemed fit by this Court to adjudicate upon the disputes that have arisen between the parties in relation to the Agreement as outlined in the Notice of Dispute dated 15.09.2020.

For petitioner : Mr.Vishnu Mohan

For respondent : Ms.Ramya
for Mr.J.Arun Prasad

ORDER

This Original Petition has been filed for appointment an arbitrator to resolve the dispute arising out of the Authorized Main Dealership Agreement dated 01.04.2018 entered between the petitioner and the respondent.

2. It is not disputed by both sides that the parties are governed by the arbitration clause 27 in the Authorized Main Dealership Agreement dated 01.04.2018. The only contention of the respondent is that prior to the reference to the arbitrator, there is a precondition to appoint a conciliator by the appointing authority. Except that, there is no dispute with regard to referring the matter to the arbitrator.

3. Clause 27 of the Authorized Main Dealership Agreement dated 01.04.2018, reads as follows :

“27.1 All disputes, differences, controversies or claims arising out of or relating to the Agreement or other contract/s or document/s or arrangement/s between the parties hereto in relation to the transactions under or pursuant to this Agreement, either during their subsistence or thereafter, [the dispute] shall be settled in the following manner

27.2 A dispute will be deemed to arise when one Party serves on the other Party a notice stating the nature of the dispute [a 'Notice of Dispute']

27.3 No dispute/s other than Dispute/s raised in Notice of Dispute can be taken or agitated by the Party causing such a Notice of Dispute, in the arbitration ensuing such Notice of Dispute, and as contemplated in Clause 27.6 below.

27.4 The parties hereto agree that they may use all reasonable efforts to resolve the Dispute as contained in the Notice of Dispute through Conciliation in the manner as provided herein below.

27.5 Agreement in relation to 'Conciliation':- The Dispute as contained the Notice of Dispute may be referred to Conciliation of a conciliator to be selected/appointed by the Chairman and Managing Director of the Company or the person nominated by him in that behalf. The Conciliator so appointed shall conduct the proceedings in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof. Such Conciliation shall be conducted in English language and the venue of Conciliation shall be either in Hosur or at such other place/venue as it is convenient for the Conciliator.

27.06 The Dispute as contained in the Notice of Dispute which could not be settled by the Parties through Conciliation [if preferred] after the period of thirty [30] days from the service of the Notice of Dispute, shall be finally settled by Arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or its statutory amendments thereof.”

4. The appointment of the Conciliator is only an option and is not a precondition to refer the matter to arbitration. Even the appointment power is retained by the Managing Director. However, taking note of the law laid down in this regard and as the appointing authority himself has approached this Court for appointment of an arbitrator, the ultimate object is only to resolve the dispute between the parties, since they are governed by the agreement,

5. The petitioner has sent a notice of demand dated 15.09.2020 demanding the amount due to them, which has not been replied by the respondent. Thereafter, on 28.10.2020 a notice under section 21 of the Arbitration and Conciliation Act was issued, which is also not replied by the respondent. Keeping silent for these two notices indicate that the respondent is not serious for conciliation also.

6. In such view of the matter, this Court is of the view that as per clause 27 of the agreement, appointment of an arbitrator is not a bar and even during the pendency of the arbitration proceedings, it is open to the respondent to go for conciliation. It is also open to the respondent to raise all their issues with regard to jurisdiction and other aspects before the arbitrator.

7. Accordingly, it is ordered as follows:

i) that Mr.C.Manickkam, District Judge [Retd.], residing at No.22, first floor, Raj Enclave, Lakshmi Nagar, 6th Street, Jalladiarpet, Medavakkam, Chennai – 600 100 Mobile No.8098478135 is appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.

ii] That the learned Arbitrator appointed herein, shall 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.

iii] That the learned Sole Arbitrator appointed herein shall be paid fees as per the schedule and the same shall be borne by the parties equally.

iv] The venue of the arbitration proceedings may be fixed by the arbitrator.

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

15.04.2021

Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

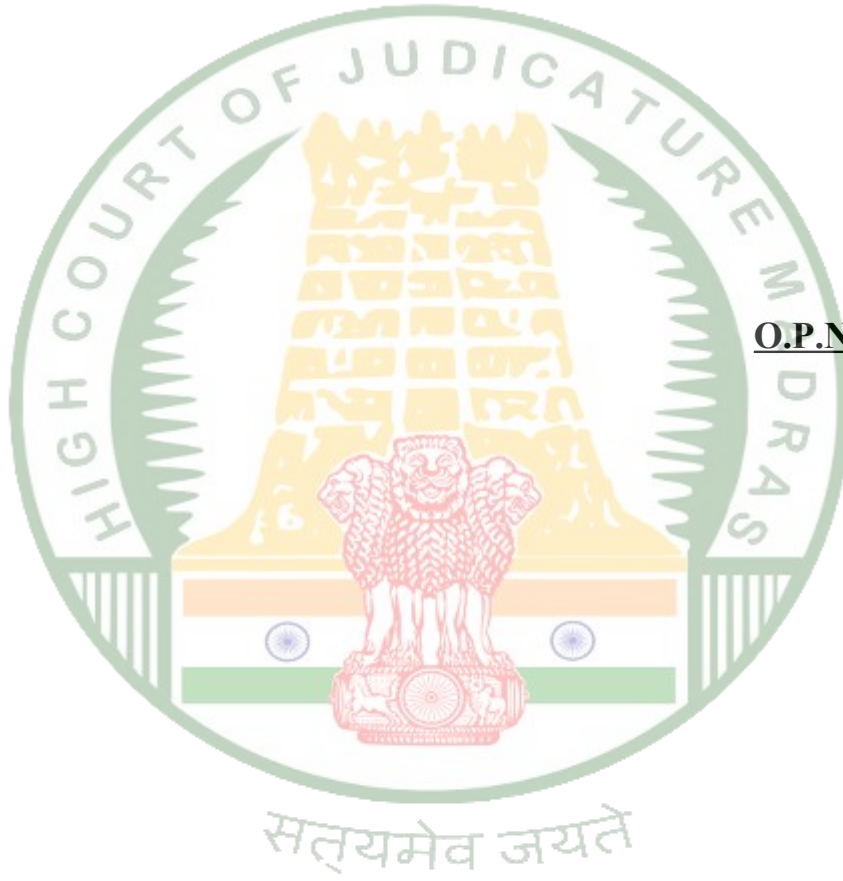
To

Mr.C.Manickkam,
District Judge [Retd.],
No.22, first floor, Raj Enclave,
Lakshmi Nagar, 6th Street,
Jalladianpet, Medavakkam,
Chennai – 600 100
Mobile No.8098478135



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N. SATHISH KUMAR, J.
VTC



order in:

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