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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 21ST DAY OF JUNE 2022

THE HON'BLE MR. JUSTICE M.SUNDAR

ARB .O.P(COM.DIV.) No.256 of 2022

In the matter of Arbitration and
Conciliation Act, 1996, and
In the matter of Voluntary
Termination and Settlement
Agreement dated 29.10.2021

FORD INDIA PRIVATE LIMITED,
REPRESENTED BY ITS AUTHORIZED SIGNATORY
Mr.Karthik Swaminath,
having its registered office at
S.P.Koil Post, Chengalpattu,
Kancheepuram - 603204
Tamil Nadu,
Chennai - 600 018

..Petitioner

-Vs-

VIIKRAM MOTOR CRAFT PRIVATE LIMITED,
Represented by its Director Mr.Ritesh Dadwani,
having its registered office at Hukumkhedi A.B.Road,
Opposite to Hotel Utsav,
Rajendra Nagar, indore,
Madhya Pradesh - 452001, India

..Respondent

Arbitration Original Petition (Commercial Division) praying that

this Hon'ble court be pleased to:

a). To allow this petition and appoint the Respondent's nominee



arbitrator for the purpose of constitution of arbitral tribunal to adjudicate the dispute that has arisen between the petitioner and the Respondent under the Voluntary Termination and Settlement Agreement dated 29.10.2021.

b) Award the cost of present proceedings to the petitioner.

This Arbitration Original Petition (Commercial Division) coming on this day before this court for hearing the court made the following order:

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 13.06.2022 under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity].

2. Mr.P.Vinod Kumar, learned counsel of M/s.J. Sagar Associates (Law Firm) on behalf of petitioner who is before this Court submits that the captioned Arb OP is predicated on clause 12 captioned 'GOVERNING LAW AND ARBITRATION' of a contract captioned 'VOLUNTARY TERMINATION AND SETTLEMENT AGREEMENT' dated 29.10.2021.

3. To be noted, the aforementioned agreement dated 29.10.2021



convenience and clarity.

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4. Aforementioned clause 12 of primary contract reads as follows:

'12. Governing Law and Arbitration

(a) This Agreement shall be governed by and construed in accordance with the laws of the Republic of India. Subject to Section 12(c) below, the Courts at Chennai, Tamil Nadu shall have exclusive jurisdiction over the Agreement.

(b) In the event of a dispute under this Agreement, the parties shall first attempt in good faith to resolve such dispute by negotiation and consultation among themselves. In the event that such dispute is not resolved on an informal basis within thirty (30) days after commencement of negotiations, either party may, by written notice to the other party ("Notice of Escalation"), refer such dispute to the executives of each party. If the executives cannot resolve such dispute during the time period ending thirty (30) days after the Notice of Escalation, either party may initiate arbitration pursuant to this Section 12.

(c) Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, which is not settled on an informal basis as set forth above in this Section 12, shall be referred to and finally resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996, which rules are deemed to be incorporated by reference in this Section 12. The seat of arbitration shall be Chennai, Tamil Nadu. The tribunal shall consist of one arbitrator, mutually agreed upon by the parties. If the parties are unable to decide on a single arbitrator within thirty (30) days, the parties will appoint one (1) arbitrator each, which arbitrators will then appoint a third arbitrator. The



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language of the arbitration shall be English. The award of the arbitrators is to be final and binding upon the parties and enforceable in any Court having jurisdiction. The provisions in this Section 12 does not preclude the parties from applying for any provisional, preliminary or injunctive remedies available for any purpose including securing the subsequent enforcement of any arbitration award'.

5. Aforementioned clause 12 of primary contract serves as an arbitration agreement between the parties being Arbitration Agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is learned counsel's say.

6. Learned counsel submits that primary contract ran into rough weather *inter alia* owing to the quantum of money payable qua termination of a dealership agreement. It is not necessary to dilate further on the arbitrable disputes as this is a Section 11 legal drill which has to perambulate within the statutory perimeter sketched by sub-section (6A) thereat.

7. Suffice to say that petitioner invoked the arbitration clause / arbitration agreement by issue of a notice dated 08.04.2022. Learned

<https://hcservices.ecourt.gov.in/hcservices/> counsel averting to typed set of papers forming part of case file submits



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that this invocation notice i.e., trigger notice was transmitted electronically as well as through courier. Learned counsel submits that service of electronic mail qua noticee/respondent is instantaneous i.e., on 08.04.2022 itself and courier has been duly served on 11.04.2022. The respondent without replying, had precipitated the matter by lodging a police complaint necessitating the presentation of the captioned Arb OP in this Court in the aforesaid manner is learned counsel's say.

8. *Prima facie* case for issue of notice has been made out.

9. Issue notice to respondent returnable in a fortnight i.e., returnable by 05.07.2022. Private notice permitted.

10. List on 05.07.2022.

Sd/M.S.J.
21.06.2022

//Certified to be a true copy//

Dated at Madras this the day of 2022.

SU./27.06.2022

COURT OFFICER(O.S.)

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