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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 07.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.M.A.No.462 of 2022

and

C.M.P.No.3359 of 2022

M/s.KTC Automobiles Private Limited
registered office at YMCA Road,
Calicut - 673 001.
represented by its
Managing Director
Mr.P.V.Nidhish,
KTC Automobiles Private Limited,
Guruvayoor Road,
Ponkunnam,
Thrissur - 680 002.

...Appellant/Respondent/Claimant

Vs.

M/s.Hyundai Motor India Limited,
Plot No.G-I, SIPCOT Industrial Park,
Irungattukottai,
Sriperumbudur Taluk,
Kancheepuram District - 602 117,
Tamil Nadu.

...Respondent/Applicant/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996, to set aside the order dated 25.01.2020 in I.A.No.1 of 2019 in Arbt.No.1 of 2019 passed by the learned Sole Arbitral Tribunal comprising of Mr.S.Sambandham, District Judge (Retd.).

For Appellant : Mr.Piyo Harold Jaimon

JUDGMENT

Aggrieved by the order of the sole Arbitrator in rejecting the claim which did not form part of the dispute submitted for arbitration, the claimant is before this Court.

2.The brief facts are as follows:

The claimant is a Transporter established as early in the year 1958 and headquartered in Kozhikode, Kerala. The claimant



is having a national presence. The claimant would submit that they are amongst the top five road transporter organisation in the Country owning a fleet of over 1000 Trucks and 75 buses and also moving over 10,000 tonnes of cargo across the Country everyday. The group had diversified into multifaceted activities. The claimant Company was originally a partnership firm, which in the year 2004, was converted into a Private Limited Company. In the year 1999, they entered the automobile Industry in Kerala through Hyundai, Mitsubishi Motors, Ford, Mahindra three wheelers and Honda two wheelers. It is in fact the reputation and clientèle as well as the goodwill which was so strong that the car manufacturers wanted to enter into a Dealership Agreement with them.

3.It appears that in the year 1999, the claimant and the respondent had entered into a Dealership Agreement. The petitioner and the original partnership firm, KTC Automobiles Private Limited had entered into an Agreement on 20.05.1999 for selling the products of the respondent. The Dealer Territory Addendum as set out in Annexure - IV to the Agreement covered are as follows:

"CALICUT, MALAPURAM, WYNAD, KANNUR, KASARGODE.
OPEN AREA : TRICHUR, PALAKKAD"

4.Thereafter, it appears that the respondent had issued a letter of Intent for the dealership at Trichur on 27.10.1999. A Letter of Intent dated 22.10.1999 was signed by the parties. Under the Agreement dated 20.05.1999, the parties had agreed to refer all their disputes for resolution to a sale consideration who was to be appointing as a Managing Director of the respondent. After the firm had converted into a Private Limited Company, the parties had entered into a Dealership Agreement dated 10.04.2006, covering the territory of the Trichur and Palakkad and a similar Dealership Agreement of the same date for the territory exclusively for Kannur. Without traversing into the details and the same is not relevant for the issue on hand.

5.It appears that the respondent had issued a show cause notice dated 29.06.2015 to the claimant contending that the sale performance has not been upto the mark and the fund infusion had also not increased, as a result of which, the sale performance was poor. The show cause notice also states that the infrastructure had not been improved and was in a poor shape. Apart from that, the area in which the spare parts were kept had not been moved from the main showroom to ensure space for the better display of cars. Therefore, the respondent had called upon the petitioner to show cause as to why the Dealership Agreement dated 10.04.2006 executed for establishing a Non-exclusive Dealership at Thrissur should not be terminated. A reply dated 08.07.2015 was issued by the claimant narrating

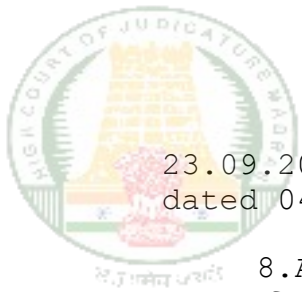


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their performance and also contending that the respondent had encroached an unauthorised service station and sales operation to operate close to the claimants outlet which had dented the sales and service. Therefore, the claimant had requested the respondent to renew the Dealership Agreement and increased their market share in Thrissur and Calicut. On 11.08.2015, the Dealership Agreement was terminated. By their letter dated 09.09.2015, the claimant had invoked the arbitration agreement requesting the respondent to appoint a sole Arbitrator and also requested them to permit the claimant to continue to function until all the issues, claims and disputes relating to the dealership agreement and its unilateral termination was resolved. After receiving the letter requesting appointment of the sole Arbitrator, the respondent Company vide letter dated 23.09.2015 had informed the claimant that Mr.S.Sambandham, District Judge, (Retd), was appointed as the sole Arbitrator to arbitrate the dispute relating to the Dealership Agreement between them for non-exclusive agreement at Thrissur. Thereafter, by letter dated 19.10.2015, the petitioner had addressed the respondent with a request to renew the dealership at Calicut and Kannur for next three years. They had also requested the respondent to withdraw the 'Open Territory Status' at Kannur and not appoint an additional dealer in Kannur for next three years as also for Calicut District. This letter was issued without prejudice to the rights and claims in the event, of the respondent succeeding in the Arbitration proceedings initiated by the respondent. A letter dated 21.12.2015 was issued by the respondent to the petitioner pointing out that the dealership at Calicut and Kannur was falling short and directing them to improve their performance.

6.By a show cause notice dated 10.03.2016, the respondent had informed the petitioner to show cause as to why the dealership at Kannur may not be terminated, in view of the poor performance in sales, inventory gap, requirement of funds, unauthorised sales outlets, manpower and poor infrastructure, etc.,

7.The claimant herein had submitted his reply through mail dated 23.03.2016 requesting a further period for submitting a detailed action plan and roadmap with system for improving the same. However, by letter dated 03.06.2016, the dealership at Kannur was terminated. This was followed by the show cause notice dated 01.07.2016 with reference to the Calicut. A reply dated 16.07.2016 was sent by the claimant and ultimately, by letter dated 22.08.2016, the dealership at Calicut was terminated. The Arbitrator who had been appointed to adjudicate the disputes had directed the parties to appear before him on 23.02.2019 though he had been appointed as an Arbitrator on



23.09.2015. The claimant thereafter filed their claim statement dated 04.07.2019 in respect of all the Dealership Agreement.

8. After receiving the claim statement, the respondent had come forward with a petition under Section 16 of the Arbitration and Conciliation Act, seeking to dismiss the claim statement filed with reference to the claimants pertaining to the territories other than Thrissur. In the affidavit filed in support of the said petition, the respondent had submitted that the request for arbitration has been only made with reference to the termination of the dealership at Thrissur. The show cause notice with reference to the above territory had been issued on 29.06.2015 to which a reply dated 08.07.2015 was issued by the claimant and thereafter, the respondent had terminated the dealership vide letter dated 08.11.2015. The claimant vide their e-mail dated 11.09.2015 had called upon the respondent to appoint an Arbitrator and accordingly, an Arbitrator was appointed by the respondent vide their letter dated 29.03.2015. The termination of the dealership at Kannur and Calicut had taken place only thereafter and there was no demand for referring the termination of these dealerships to the sole Arbitrator. The respondent would submit that the Arbitrator can decide only the disputes that have been referred to him and he cannot travel beyond the reference. The inclusion of the claim with reference to Kannur and Calicut without making a request for the same is definitely without jurisdiction and therefore, the Arbitral Tribunal did not have the jurisdiction to entertain the claim with reference to Kannur and Calicut and also other two locations at Palakkad and Kodunganallur and therefore, they sought for dismissal of the appeal relating to the other Districts other than Thrissur.

9. A counter was filed by the respondent in which they would plead that the closure of the Dealership at Thrissur had a cascading effect, as a result of which, the Dealership at Kannur and Calicut had been affected. That the poor performance was directly related to the termination of the dealership at Thrissur which is evident from the communication from the parties. The inclusion of these disputes are very much interlinked with the arbitration clause.

10. The Arbitral Tribunal by order dated 25.01.2020 had allowed the said application by stating that the disputes with reference to Kannur and Calicut had not been referred to the Arbitral Tribunal and it was only the dealership with reference to Thrissur that had been referred to. Challenging this order, the appellant/claimant is before this Court.

11. The main ground on which the claimant would seek to rest his case is that the dealership at Thrissur, Kannur and Calicut



is so interlinked that the termination of one affected the sales of other area. That apart, a contract itself contemplates that once the dealership is terminated the remaining unsold auto mobiles would be transferred to the other dealership which would clearly show that the Contract was composite contract.

12.Mr.Piyo Harold Jaimon, learned counsel for the appellant would raise the above issues and relied upon a Judgment of the Hon'ble Supreme Court in AmeetLalchand Shah and others v. Rishabh Enterprises and another [(2018) 5 SCC 678] that a hyper technical ground should not be used to refuse the adjudication of disputes qua arbitration. The learned Judge had observed that although there were different agreements involving several parties it pertains to the single commercial project and all the four agreements and all the parties have referred the disputes to the Arbitrator. He would submit that since the dealership and the operations of each of the areas was interlinked the disputes would be squarely covered by this Judgment.

13.Heard the learned counsel appearing on behalf of the appellant and perused the papers.

14.A perusal of the show cause notice which was the precursor for the termination letter clearly indicates that the respondent herein had issued a show cause notice with reference to the dealership Agreement dated 10.04.2006 for non-exclusive dealership at Thrissur. The show cause notice had been warned the claimant as follows."

"Under these circumstances, we hereby call upon you to show cause within seven (7) days from the date of receipt of this Show Cause Notice as to why the Dealership Agreement dated 10.04.2006 executed with you for establishing a Non-Exclusive Dealership at Thrissur should not be terminated. Failure to submit you explanation within the time stipulated above will be construed that you have no valid explanation to offer and we will be constrained to proceed further as per the terms of the Dealership Agreement."

15.To this, a reply dated 08.07.2015 had been issued by the claimant herein. Once again the subject referred to therein was "Reply to your show cause notice for Hyundai Dealership at Thrissur". The termination letter dated 11.08.2015 once again specified that the termination was with reference to the non-exclusive dealership at Thrissur under a Dealership Agreement dated 10.04.2006. The response to this termination letter dated 09.09.2015 by the claimant also referred only to the dealership at Thrissur. Much after the appointment of the Arbitrator, the



dealership at Calicut was terminated vide letter dated 22.08.2016 and the dealership at Kannur was terminated vide letter dated 03.06.2016. Each of the termination letter, detailed the dealership in respect of which the termination was issued. The claimant was therefore put on notice about the dealership that was terminated. The sole Arbitrator has been appointed only with reference to dealership at Thrissur much before the termination of the dealership at Kannur and Calicut. There is no request for referring the dispute pertaining to the dealership at Kannur and Calicut to the arbitration.

16. Section 21 of the Arbitration and Conciliation Act, provides that the arbitral proceedings would commence with a request being made by an aggrieved party to the respondent. In the case on hand, such request has been made only with reference to the dealership at Thrissur. No request has been made with reference to the dealership at Calicut and Kannur. Without a request being made, neither the Arbitrator nor the respondent could assume the dispute. The Judgment of the Hon'ble Supreme Court quoted by the respondent would not apply to the facts on hand as all the Contracts are distinct or independent. Therefore, I see no reason to interfere with the order passed by the sole Arbitrator.

Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

mps
To
Dr.S.Sambandham,
District Sessions Judge (Rtd)
Sole Arbitrator
Arbitration Tribunal.

+1cc to M/s.T.Saikrishnan, Advocate, S.R.No.15309

C.M.A.No.462 of 2022
and
C.M.P.No.3359 of 2022

PM(CO)
RGA(05/05/2022)