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Arb.O.P (Com.Div).No.24 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2022

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div).No.24 of 2022

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

... Petitioner

vs.

R.Radhika
Sole Proprietrix of Jogulamba Motors
Having its principle place of business at:
Opp: SBI, Main Road, Leeja 509 127
Gadwal District, Telengana

Also at

No.6-1-64
Veda Nagar, Gadwal (Rural)
Gadwal
Mahabubnagar
Telangana – 509 125.

... Respondent

Prayer:

Arbitration Original Petition filed under Section 11(5) of Arbitration



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and Conciliation Act, 1996 to appoint an arbitrator from the panel of nominees suggested by the Petitioner to the Respondents vide Notice dated 12.11.2020, in accordance with Clause 22 of the Authorized Dealership Agreement dated 27.09.2017 or such other person as deemed fit by this Hon'ble Court, to adjudicate upon the disputes that have arisen between the parties in relation to the Agreement as outlined in the Respondent's Notice of Dispute dated 15.10.2020 and letter dated 12.11.2020 issued by the Petitioner.

For Petitioner : Mr.Vishnu Mohan,
for Mr.R.Parthasarathy

For Respondent : Mr.Midhun Kumar Allu
of M/s.Vankina, Allu & Partners [Law Firm]

ORDER

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 22.02.2022 which reads as follows:

'Captioned Arb OP has been presented in this Court on 04.01.2022 under Section 11(5) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' (hereinafter 'A and C Act' for the sake of convenience and clarity) with a prayer for appointment of Arbitrator. Captioned Arb OP is predicated on an agreement with caption AUTHORISED DEALER AGREEMENT dated 27.09.2017.



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2. *Mr.Vishnu Mohan, learned counsel for petitioner, adverting to aforementioned Authorised Dealership Agreement and more particularly, clauses 21 and 22 thereat submits that the same serve as an arbitration agreement between the parties i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. Learned counsel submits that captioned Arb OP is predicated on aforementioned Authorised Dealership Agreement and aforementioned clauses therein.*

3. *Hon'ble Predecessor Judge has ordered notice and permitted private notice. This is vide proceedings made in the listing on 01.02.2022.*

4. *Sole respondent has been since served with private notice and affidavit of service vide Diary No.5193/2022 dated 17.02.2022 has been duly filed.*

5. *Though the name of the respondent is shown in the cause title (part of the cause list), Registry to show the name of respondent together with full/complete address in the cause list in the next listing. This is with the intention of giving further opportunity to the respondent.*

6. *Learned counsel for petitioner brings to the notice of this Court that the respondent has moved the jurisdictional District Court i.e., District Court at Krishnagiri under Section 9 of A and C Act for various reliefs. To be noted, this is mentioned only for completion of facts.*



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List on 28.02.2022 (Monday).'

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2.The short forms and abbreviations used in the previous proceedings shall continue to be used in this order also. To be noted, the earlier proceedings (reproduced supra) shall be an integral part and parcel of this order.

3.Pursuant to aforementioned proceedings dated 22.02.2022, the lone respondent has been duly served. Mr.Midhun Kumar Allu of M/s.Vankina, Allu & Partners [Law Firm] (address for service is Flat No.301, Plot No.450, K.K.Plaza, 100 Feet Road, Ayyappa Society, Madhapur, Hi Tech City, Hyderabad – 500 081 [Mobile : 9581576977]) is before this virtual Court and he submits that he has instructions to enter appearance on behalf of the lone respondent and he would be filing his vakalatnama in the Registry of this Court within three days from today i.e., on or before close of working hours on 03.03.2022.

4.Be that as it may, without waiting for aforementioned procedural formality, learned counsel for respondent very fairly submits that there is



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no dispute or disagreement about the existence of arbitration agreement between the parties. To be noted, examination of existence of arbitration agreement between parties is the limited legal perimeter of a legal drill under Section 11 of A and C Act qua **Mayavati Trading principle** i.e., ratio laid down in **Mayavati Trading Pvt. Ltd vs Pradyut Deb Burman** reported in **2019 (8) SCC 714**. The relevant paragraph in **Mayavati Trading case law** is paragraph No.10 and the same reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgement, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgement in Duro Felguera'

5. In the light of there being no dispute or disagreement about the existence of arbitration agreement between the parties (which is in the



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form of Clauses 21 and 22 of the arbitration agreement captioned 'AUTHORISED DEALER AGREEMENT' dated 27.09.2017) Mr.Aditya Reddy, Advocate having office at D2, Vasanth Apartments, Avvai Shanmugam Salai, Chennai – 600 018 [Mobile : 9884811101] is appointed as sole arbitrator to enter upon reference, adjudicate the arbitrable disputes that have arisen between the petitioner and the respondent.

6.The schedule of fees for the sole arbitrator shall be governed by the Fourth Schedule of A and C Act.

7.Captioned Arbitration O.P is ordered on above terms. There shall be no order as to costs.

28.02.2022

Speaking/Non-speaking order

Index : Yes / No

Internet : Yes / No

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Note: Registry is directed to communicate a copy of this order forthwith to

Mr.Aditya Reddy,
Advocate
D2, Vasanth Apartments,
Avvai Shanmugam Salai,
Chennai – 600 018
[Mobile : 9884811101]



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