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Arb.O.P No.13 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.11.2022

Coram:

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

Arb.O.P.No.13 of 2022

M/s.India Yamaha Motor India Ltd.,
Represented by its Authorized Signatory
AKDR Tower, 5th Floor,
Rajiv Gandhi Salai (OMR),
Mettukuppam,
Chennai – 600 097.

.. Petitioner

Vs.

Bugutha Anupama

.. Respondent

Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 praying to appoint a Sole Arbitrator to constitute the arbitral tribunal to resolve the disputes that have arisen between the petitioner and the respondents.



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For petitioner : Mr.S.Ramasubramanian

For respondent : Mr.Rohan Rajesekaran

ORDER

The petitioner sought residence for their employees and accordingly, had taken on lease a building which belonged to the respondent herein. A Lease Agreement in this regard had been entered on 30.03.2016. The Lease Agreement contained the normal clauses relating to the obligations of the lessor and lessee. More specifically, there was also an agreement that the parties shall refer any disputes to arbitration. The said clause is extracted below:

22.Except as otherwise specifically provided in the Lease Deed that may be executed pursuant to this Deed, the following provisions apply if any dispute or difference arises between the Parties arising out of or relating to the lease of Premises (The 'Dispute').

“a.A Dispute will be deemed to arise when one Party severs on the other Party and notice stating the nature of the



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Dispute (a 'Notice of Dispute').

b.The Parties hereto agree that they will use all reasonable efforts to resolve between themselves, any Disputes through negotiations.

c).Any disputes and differences whatsoever arising under or in connection with this Deed which could not be settled by parties through negotiations, after the period of thirty (30) business days from the service of the Notice of Dispute, shall be finally settled by arbitration by a sole arbitrator in accordance with the Arbitration and Conciliation Act, 1996 and:

i).All proceedings shall be conducted in English and a daily transcript in English shall be prepared;

ii).The venue of arbitration shall be in Chennai, India.

iii).The order of such arbitral tribunal shall be final and binding on both parties.

iv).The cost of arbitration shall be shared by both parties in equal proportion. The party in whose favour the final



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award is passed shall have the right to claim the proportionate cost already incurred for arbitration.”

2.In the affidavit filed in support of the petition, it is stated that the respondent had failed to abide with the undertakings and assurances and was under a liability to repay the security deposit to the petitioner herein.

3.However, it is contended by the learned counsel for the respondent that furnitures and fittings had been removed and that there has to be a proportionate deduction in the security deposit.

4.In this regard, I am confident that the learned Arbitrator would enter into a discussion on all these aspects, if properly presented by both sides.

5.The petitioner had also issued notice on 28.01.2022 seeking to refer the disputes to arbitration. It is contended in the petition that the respondent had not given any reply. The present Arbitration Original Petition has therefore been filed taking advantage of Section 11(5) of the Arbitration and Conciliation Act,



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1996 seeking appointment of an Arbitrator to enter into the disputes, which had arisen between the petitioner and the respondent.

6.Heard both sides.

7.Both the learned counsels admit that there is a clause to refer the disputes to arbitration, but the only issue which is pointed out by the learned counsel for the respondent is about removal of furnitures and fittings and the deduction of the value of those furnitures and fittings from the security deposit.

8.I would leave that issue open and grant permission to the petitioner and also the respondent, when they present the terms of reference to the Arbitrator, to also present the aforesaid points to be adjudicated by the Arbitrator. The Arbitrator is under an obligation to enter reference and follow the principles as enunciated under the Act, namely, to issue notice to both sides, give them necessary opportunity of presenting their respective evidence and also arguments and then adjudicate the issues.

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C.V.KARTHIKEYAN, J.

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9.For reasons set out above, this Arbitration Original Petition in Arb.O.P.No.13 of 2022 is allowed by appointing Mr.S.Wilson, Advocate (M.S.No.392 of 1990, No.25 Law Chambers, High Court Building, Chennai, Mobile No : 98410 55349) who is in the Panel of Receivers for the year 2022 – 2024, maintained by the Original Side of the Madras High Court, as the Sole Arbitrator. The Sole Arbitrator is directed to enter into a reference and adjudicate the dispute between the parties in accordance with law and complete the proceedings on or before 30.06.2023. The initial fees are determined at Rs.50,000/- (Rupees Fifty Thousand only). Subsequently, the Arbitrator may determine the further fees to be paid. The total fees should be shared in equal proportions between the petitioner and the respondent.

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Internet: Yes/No

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