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Arb. O.P. No. 635 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.635 of 2022

TVS Motor Company Limited,
regd. Office at "Chaitanya" no.12,
Khader Nawaz Khan Road,
Nungambakkam,
Chennai-600 006.
rep by Mr.M.Aravind,
Authorized representative.

... Petitioner

Vs.

M/s.Jindal Motor,
Opp: Jindal Park, Barwala Road,
Hissar-125 001 Haryana,
rep. by its Proprietor Mr.Pankaj Jindal

... Respondent

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying

(i) to pass an order of appointing a sole arbitrator to adjudicate the disputes that has arisen between the petitioner and the respondent in



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accordance with Clause 27 of the Authorized Dealer Agreement dated
15.04.2019.

For Petitioner : Mr.Muthuchharan Sundresh

For Respondent : No Appearance

ORDER

This Original Petition has been filed seeking for appointment of Sole Arbitrator to adjudicate the disputes that has arisen between the petitioner and the respondent in pursuant to the Authorized Dealer Agreement dated 15.04.2019 as per Clause 27 of the Agreement.

2.The petitioner herein is a Company incorporated under the provisions of the Companies Act 1956. During the course of business, the petitioner and the respondent had entered into an Authorised Main Dealership Agreement(AMD Agreement) dated 15.04.2019 which was initially valid till 30.09.2019 and thereafter extended from time to time vide extension letters dated 01.07.2019, 01.12.2019, 05.06.2020, 23.03.2021 and 24.06.2021. By



virtue of the letter dated 31.12.2021, the petitioner informed the respondent that AMD Agreement shall not be renewed after 31.03.2022 and no further extensions would be granted. The said document is enclosed as annexure no.7. In response to the communication dated 31.12.2021, the respondent has raised dispute that non-renewal of agreement would amount to criminal breach of trust and huge loss in business apart from the other damages.

3.The learned counsel for the petitioner would submit that AMD Agreement dated 15.04.2019 contains arbitration Clause, i.e. Clause 26 which specifies the appointment of arbitrator to adjudicate the disputes between the petitioner and the respondent, which is extracted below:

"26.Governing Law and Jurisdiction:

This Agreement and all questions of its interpretation shall be construed in accordance with the laws of the Republic of India. Subject to Clause 27 below, wherever judicial intervention is possible, the District Court at Krishnagiri within whose jurisdiction Hosur comes under, shall have exclusive jurisdiction in respect of all matters relating thereto under any law for the time being in force, including intervention of courts under Arbitration and Conciliation Act, 1996, or any amendment



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thereof, and each of the Parties hereby consents to the exclusive jurisdiction of such Court and of the appropriate appellate courts therefrom and irrevocably waive, to the fullest extent permitted by law, any objection which it may have now or hereafter to the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient form.

4.The learned counsel for the petitioner further submitted that in response to the letter dated 31.12.2021 sent by the petitioner, the respondent sent a reply letter dated 10.01.2022, wherein, it has been stated that the agreement cannot be terminated unilaterally by the petitioner since on assurance given by the petitioner of continued distributorship, the respondent purchased the stock based on the AMD Agreement, which is still lying unsold with it.

5.Further, the learned counsel for the petitioner submitted that larger number of stocks are kept under the custody of the respondent for which they have not made any payment. In this regard, they have also filed a petition before the District Court under Section 9 of the Act for handing over the



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stocks. Since the respondent has raised a dispute with regard to the termination of the AMD Agreement and failure on the part of the respondent in handing over the stocks of the petitioner, the petitioner has sent a notice dated 25.03.2022, proposing one Shri Viswanath Angadi, District Judge (Retd.) as a sole arbitrator for adjudication of the dispute between them and requested the respondent to confirm the same. However, till date the respondent has not given their consent for the appointment of sole arbitrator as proposed by the petitioner in terms of Clause 26 & 27 of the AMD Agreement. Therefore, the petitioner has approached this Court, seeking for appointment of a sole Arbitrator.

6.Subsequent to the filing of the present petition, notice has been ordered to the respondent. Despite service of notice and printing the name of the respondent in the cause list, no one has entered appearance and represented on behalf of the respondent. It shows that the respondent is not interested to prosecute the present case.

7.Heard the learned counsel appearing for the petitioner and perused the



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8. In view of the above, since the present dispute raised with regard to the termination of the AMD Agreement and failure on the part of the respondent in handing over the stocks which are still lying with the respondent owned by the petitioner, the present dispute can be adjudicated in terms of Clause 26 and 27 of the EMD Agreement, this Court feels it appropriate to appoint sole Arbitrator in the matter and accordingly, passes the following:

i) Hon'ble Mr. Justice V. Parthiban (Rtd.), residing at Flat No. 5069, Z Block, 12th Street, Anna Nagar West, Chennai-40, Contact No. 94440 94401 is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

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 and other incidental charges, fixed by him and the same shall be borne by the parties equally.

iv) In case the respondent does not turn up and participate in the arbitral proceedings, the petitioner shall bear and pay the



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remuneration and other incidental charges at first to the learned Arbitrator and later recover the same from the respondent.

9. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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13.12.2022

Issue order copy on 05.01.2023.



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KRISHNAN RAMASAMY, J.

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