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Arb. O.P(Com.Div). No.169 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

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Arb.Appl.No.62 of 2023

M/s.Garuda Enterprises,
by its proprietor, M.Kumar,
having office previously at
58/1 B-2, Thorapalli Agraharam,
Hosur – 635 109.
Now at 30/8,
N.B.Agraharam,
Karapally, Hosur – 635 109,
Krishnagiri District.

... Petitioner

Vs.

M/s.Kubota Agricultural Machinery,
India Pvt. Ltd., represented by its
Managing Director,
Block No.94, Tower – I, 8th Floor,
MRC Nagar,
Chennai – 600 028.

... Respondent

PRAYER : Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a Sole Arbitrator (an Advocate), to adjudicate upon the disputes between the petitioner and the respondent company arising out of the Dealership Agreement dated 05.11.2019 entered between the petitioner and the respondent company in accordance with the provisions of the Arbitration and Conciliation Act. and to direct the



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respondent to pay costs.

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For Petitioner : Mr.P.Mani

For Respondent : Mr.S.Arjun Suresh
for M/s.DUA Associates

ORDER

This petition has been filed under Section 11(5) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint an Arbitrator to adjudicate upon the disputes between the petitioner and the respondent company arising out of the Dealership Agreement dated 05.11.2019 entered between the petitioner and the respondent company in accordance with the provisions of the Arbitration and Conciliation Act.

2. Learned counsel appearing for the petitioner would submit that the petitioner and the respondent entered into a dealership agreement dated 05.11.2019 for marketing and selling under the brand name “Kubota” Agricultural Machinery (Power tiller, tractor, transplanter and harvester) parts and accessories in Krishnagiri District. As per the dealership agreement, the petitioner gave bank guarantee for Rs.33,00,000/- and deposited Rs.5,00,000/- as cash deposit and further deposited Rs.3,00,000/- towards purchase of spare



parts. After four months of the dealership agreement, lockdown was declared for Covid-19 and there was a dip in the sale of the company's products. After the cessation of Covid -19 lockdown period, the sale of the company's product gradually increased and the petitioner placed purchase orders from June 2022 to November 2022 for 26 products, the respondent did not supply the products, despite his repeated requests.

3. He would further submit that the respondent company find fault with the petitioner for small shortcomings which could be rectified and issued the pre-cancellation of Dealership notice dated 22.09.2022, for which the petitioner sent the reply in the form of legal notice dated 22.11.2022. The respondent further sent a reply notice dated 15.12.2022 with false allegations. Hence, the petitioner has come up with the present application praying to appoint a sole Arbitrator to resolve the disputes in terms of Clause 27 of the said contract.

4.Learned counsel appearing for the respondent would submit that the respondent has no objection in appointing a sole Arbitrator to resolve the present dispute.



5.For better appreciation, Clause 27 of the Dealership Agreement dated

05.11.2019, is reproduced hereunder:

“27. Dispute Resolution

The company and the Dealer agree that they will first attempt to resolve any dispute regarding this agreement through mutual consultation. However, if such consultations do not result in amicable settlement of the dispute within 30 days after one party has given written notice to the other to commence such consultations, then either party may refer the dispute to arbitration. Any dispute, controversy or claim arising out of or relating to the agreement or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 as at present in force. The arbitration shall be conducted by a sole arbitrator to be appointed by parties as per Arbitration and Conciliation Act, 1996 (as amended from time to time). The language of arbitration shall be English and the venue of arbitration shall be Chennai. The award of the arbitral tribunal shall be final and binding on the parties.”

6.Considering the submissions made by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and in view of the fact that the present dispute is arising out of the Agreement dated 05.11.2019, and the same is arbitrable under Clause 27 of the said agreement,



hence, this Court is inclined to appoint a sole Arbitrator and pass the following orders:

i) Accordingly, Mr.V.Nallasenapathy, Advocate, Former member of NCLT, 3B, Pushkar Pradhan, 39, East Avenue Road, Korattur, Chennai – 600 050, Mobile No.9841527190 is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) 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 without influencing any of the observations made by this Court in this order.

iii) Learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

iv) In the event of non-appearance of the respondent/petitioner herein, the petitioner/respondent herein shall bear the entire remuneration and other expenses and thereafter, the petitioner/respondent can recover the same directly from the respondent/petitioner herein.



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7.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. Connected arbitration application is closed.

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KRISHNAN RAMASAMY. J.,
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