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Arb.O.P.(Comm.Div.)No.117 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.06.2023

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The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.) No.117 of 2023

Same Deutz Fahr (India) Private Limited
Represented by Mr.P.Ramesh
No.72M, SIPCOT Industrial Complex,
Ranipet – 632 403.

...Petitioner

Versus

Mr.Dinesh N.Kambi
Proprietor, M/s.Dhruva Motors
Neelanagouda Complex,
Opp. LIC Office, P.B.Road,
Haveri – 581 110,
Karnataka.

Also at:
Parmeshwar Complex,
Opp. City Police Station,
P.B.Road, Haveri,
Karnataka – 581 110.

...Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the following reliefs:

- (i) To appoint a Sole Arbitrator to adjudicate the dispute between the petitioner and respondent and
- (ii) To direct the respondent to pay the cost of this petition.



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For Petitioner : Ms.Prapti Mehta
for M/s.Surana & Surana

For Respondent : No Appearance

ORDER

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to appoint an Arbitrator to adjudicate the dispute arisen between the parties in relation to the Dealership Agreement dated 10.01.2019.

2. The learned counsel for the petitioner submitted that the petitioner is carrying on the business of manufacturing tractors, harvesting machines and diesel engines. The respondent had approached the petitioner for the purposes of availing dealership of the petitioner's products such as tractors, spare parts etc. After discussions and detailed negotiations, the petitioner vide Letter of Intent dated 17.02.2017, appointed the respondent as authorized dealer for sale of its tractors, spare parts and services of 'Deutz-Fahr' branded tractors and also, the petitioner has issued a Letter of Authorization dated 29.08.2018 to the respondent to operate from the



address of Neelanagouda Complex, Opposite, LIC Office, P.B.Road,
Haveri, Karnataka – 581 110.

2.1. Thereafter, the petitioner and the respondent have entered into a Dealership Agreement dated 10.01.2019, as per which, the petitioner continued supplying Tractors, Spare parts, tools to the respondent, against which, the petitioner received part-payments from the respondent. The petitioner made these supplies from 2017 to October, 2021 and thereafter, the petitioner stopped the supplies owing to non-payment of dues by the respondent.

2.2. While so, the respondent vide Confirmation Letters dated 20.01.2021 & 28.01.2021, acknowledged that the total outstanding amount payable by them to the petitioner is Rs.90,89,562/-. Thereafter, the respondent made certain part-payments to the petitioner. Then, the respondent vide Confirmation Letter dated 08.04.2022, acknowledged that the total outstanding amount payable by them to the petitioner is Rs.75.28 Lakhs.



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2.3. The learned counsel also submitted that though the petitioner repeatedly requested the respondent to make outstanding payments towards the supplies received, the respondent did not come forward to pay the outstanding amount. Hence, the petitioner sent a Legal Notice dated 13.05.2022 to the respondent, seeking to pay the outstanding amount of Rs.75,29,509/-. After the receipt of said notice, the respondent vide Reply dated 09.06.2022, denied to pay the outstanding amount of Rs.75,29,509/-.

2.1. The learned counsel further submitted that as per Clause No.14J of the Dealership Agreement dated 10.01.2019, if any dispute arises between the parties in relation to the Dealership Agreement, the same shall be resolved by a Sole Arbitrator as per the provisions of the Act. For better appreciation, Clause No.14J of the Dealership Agreement is extracted hereunder:

“14. MISCELLANEOUS

.....

J. Dispute Resolution

Any and all disputes, which may arise under, out of, in connection with, or in relation to the Agreement, including those as to the application and/or interpretation of this Agreement, or the



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legal relations and/or mutual rights, performance and obligations of the parties hereunder, shall be resolved through negotiations by the authorized officers or representatives of the Company and the Dealer before seeking outside resolution of the dispute. Those disputes not resolved by negotiations, within thirty (30) days from the date of notification of the disputes, shall be resolved through arbitration by a sole arbitrator to be appointed by the Director of the Company, who may be authorized by the Board of Directors of the Company in this regard. The arbitration proceedings shall be held at Chennai in accordance with the provisions of the Arbitration & Conciliation Act, 1996 as in force in India or any statutory modifications or reenactments thereof. The Courts at Ranipet/Vellore alone shall have exclusive jurisdiction in all matters arising out of this Agreement.”

Hence, the petitioner vide Notice dated 15.12.2022, called upon the respondent to accept the nomination of one Mr.P.Ramesh as Authorized Officer/Representative of the company to resolve the dispute between the parties, within 30 days from the date of receipt of that notice. However, even after the receipt of said notice, there was no response from the respondent. Therefore, left with no other alternative, the petitioner has filed the present petition before this Court.



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3. Despite the service of notice and name of the respondent is being printed in today's cause list, none appeared on behalf of the respondent.

4. Heard the learned counsel for the petitioner and perused materials placed before this Court.

5. Upon perusing the materials and hearing the submissions made by the learned counsel for the petitioner, it is crystal clear that the dispute between the parties is arising out of the Dealership Agreement and the same is arbitrable as per Clause No.14J of the Dealership Agreement dated 10.01.2019. Hence, this Court is inclined to pass the following order:

(i) **Mr.Arun C.Mohan, Advocte, No.D4, III Floor, Ceebros Building, 32, Cenotaph Road, Teynampet, Chennai – 600 018, Mobile No.9600020715** is appointed as the Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.

(ii) The learned Arbitrator shall pass award within a period of six months from the date of receipt of a copy of this order, only after issuing notice to the parties and hearing them.



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(iii) The parties shall pay fees and other incidental charges to the learned Arbitrator fixed by him, equally.

(iv) In the event of non-appearance of the respondent before the learned Arbitrator, petitioner shall pay the entire remuneration and other expenses at first instance and thereafter, petitioner can recover the same directly from the respondent.

6. Accordingly, this petition is ordered. The parties shall bear their own costs. Since this Court has appointed the 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.

15.06.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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KRISHNAN RAMASAMY, J.

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