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Arb.OP.(comdiv) No.135 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.135 of 2023

Same Deutz Fahr India Private Limited,
Rep. By Mr.P.Ramesh,
No.72M, SIPCOT Industrial Complex,
Ranipet – 632 403.

.. Petitioner

-VS-

Kodala Deeptika Rani,
Proprietor, M/s.Suharsha Agencies,
Plot No.4-5-6, Door No.5-5-6,
Near Bharath Gas, Beside Rallavagu,
Kodada X Road, Gurrallpadu Village,
Khammam Rural, Telangana-507 003.

.. Respondent

Petition under Section 11 of the Arbitration and Conciliation Act, 1996, has been filed seeking to appoint a sole arbitrator to adjudicate the dispute between the petitioner and the respondent.

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

For Respondent : Ex-parte



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ORDER

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2. The petitioner is a manufacturer and the respondent is its dealer. A dealership agreement dated 10.01.2019 has been entered into between the petitioner and the respondent. There arose a dispute between the parties under the dealership agreement dated 10.01.2019. There is an arbitration clause available in the dealership agreement dated 10.01.2019, which is extracted hereunder:-

“14.J. Dispute Resolution :

Any and all disputes, which may arise under, out of, in connection with, or in relation to this agreement, including those as to the application and/or interpretation of this agreement, or the legal relations and/or mutual rights, performance and obligations of the parties hereunder, shall be resolved through negotiations by the authorised officers or representatives of the Company and the dealer before seeking outside



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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 authorised 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.”

3. In terms of the arbitration clause, the petitioner has invoked the arbitration by issuing a notice to the respondent on 05.12.2022. The said notice was returned with an endorsement “unclaimed”, which amounts to deemed service. Despite receipt of the notice dated 05.12.2022, the respondent has chosen not to reply to the said notice and they have also not appointed any arbitrator. In such circumstances, this petition has been filed



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by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator.

4. Despite effecting substituted service as seen from the affidavit of service filed by the learned counsel for the petitioner, no one has entered appearance on behalf of the respondent. Therefore, the respondent is set exparte and the name of the respondent is also printed in the cause list.

5. Since there is a valid arbitration agreement in accordance with the arbitration clause contained in the dealership agreement dated 10.01.2019 and there is no consensus between the parties with regard to the name of the arbitrator, this Court will have to necessarily appoint an arbitrator to adjudicate the dispute between the parties. Accordingly, this petition is allowed with the following directions:-

(a) This Court hereby appoints Mr.P.V.Balasubramaniam, Advocate, having office at III/1, 3rd floor, Sai Durbar Apartments, 50, 2nd Main Road, R.A.Puram, Chennai – 28 (Mobile No.9841041888), as the sole arbitrator to adjudicate the dispute between the petitioner and the respondent arising out



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the dealership agreement dated 10.01.2019.

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(b) The Sole Arbitrator appointed by this Court shall be paid remuneration as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

(e) Both the parties shall share equally the fees payable to the sole arbitrator.

08.09.2023

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ABDUL QUDDHOSE, J.

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