



Arb.O.P.(Com.Div.) No.140 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.140 of 2023

TVS Motor Company Limited,
rep. by its DGM - Legal,
K.Pradeep

... Petitioner

Versus

1.M/s.Shakti Automobiles,
Madhepura Road, Purab Bazaar,
Saharsa, near Railway Colony,
Bihar - 852 113.

2.Rajeev Kumar Singh

3.Deepak Kumar Singh

4.Phuleshawar Kumar Singh

5.Sanjeev Kumar

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes between the parties arising out of the Authorised Main Dealership Agreement dated 01.04.2018.



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For Petitioner : Mr.Anirudh Krishnan

For Respondents : No appearance

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator by this Court.

2.The petitioner is a Manufacturer and the respondents are its dealers. The parties have entered into a Dealership Agreement dated 01.04.2018. There seems to be a dispute arising out of the same. There is an Arbitration Clause in the Dealership Agreement dated 01.04.2018, which is extracted hereunder:

CLAUSE 27

DISPUTE RESOLUTION

27.1 All disputes, differences, controversies or claims arising out of or relating to this Agreement or other contract/s or document/s or arrangement/s between the parties hereto in relation to the transactions under or pursuant to this Agreement, either during their subsistence or thereafter, (The Dispute) shall be settled in the following manner:

27.2 A Dispute will be deemed to arise when one party serves



on the other party a notice stating the nature of the dispute (a 'Notice of dispute').

27.3 No dispute/s other than Dispute/s raised in Notice of Dispute can be taken or agitated by the party causing such a Notice of dispute, in the arbitration ensuing such Notice of dispute, and as contemplated in Clause 27.6 below.

27.4 The parties hereto agree that they may use all reasonable efforts to resolve the dispute as contained in the Notice of dispute through Conciliation in the manner as provided herein below.

27.5 Agreement in relation to 'Conciliation':- The Dispute as contained the Notice of Dispute may be referred to Conciliation of a conciliator to be selected/appointed by the Chairman and Managing Director of the Company or the persons nominated by him in that behalf. The Conciliator so appointed shall conduct the proceedings in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof. Such Conciliation shall be conducted in English language and the venue of Conciliation shall be either in Hosur or at such other place/venue as it is convenient for the Conciliator.

27.6 The Dispute as contained in the Notice of dispute which could not be settled by the parties through Conciliation (if preferred) after the period of thirty (30) days from the service



of the Notice of Dispute, shall be finally settled by Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or its statutory amendments thereof, and:

(a) All proceedings of arbitration shall be conducted in English;

(b) The arbitral tribunal shall comprise of a sole arbitrator selected by the Chairman and Managing Director of the Company or any other person nominated by the Chairman and Managing Director in this regard (hereinafter referred to as the 'Appointing Authority'); however, the Company may at its sole discretion if requires resolution of the dispute/s by an arbitral tribunal comprising of three (3) arbitrators, then, one arbitrator to be selected by the Company, the other arbitrator to be selected by the AMD, and the third arbitrator to be selected by the two arbitrators appointed by the Company and the AMD, who shall serve as Presiding Arbitrator of the Arbitral Tribunal.

(c) In no event, the power/authority of Appointing Authority in selecting/appointing arbitrator can be challenged or questioned. The Appointing Authority gets the power and authority on the mutual agreement under this Clause to select/appoint arbitrator at its choice and the same can be exercised by the appointing authority in the manner it deems



fit. The Appointing Authority need not subject itself to any general or specific procedure in the matter of appointment of arbitrator;

(d) Upon the Arbitral Tribunal entering the Dispute so referred to it, it shall have full, complete and valid jurisdiction as enshrined in the Arbitration and Conciliation Act, 1996 and/or any other modifications/amendments thereof, to adjudicate/resolve the dispute;

(e) The venue of arbitration may be in Hosur or any other venue as per the choice of the arbitral tribunal; and

(f) The costs of arbitration shall be initially borne equally by the Parties to it and when the arbitral tribunal awards any cost, interest in favour of a party, the party who is directed by the arbitral award/order/s of the arbitral tribunal shall finally bear the same and honour the award in letter and spirit.'

3.The petitioner has also invoked Arbitration in accordance with the Arbitration Clause by sending a notice to the respondents on 19.12.2022. The said Invocation Notice has also been received by the respondents as seen from the Tracking report sent by the postal authorities.

4.The respondents have also been duly served in this petition. Their



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names are also printed in the cause list today.

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5.Since there is a valid Arbitration Agreement between the parties and there has been no consensus with regard to the name of the Arbitrator, this Court will have to necessarily appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act.

6.For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:

(a)This Court appoints Mr.Abishek Jenasenan, having Office at No.15, Old No.6, Deivasigamani Street, Royapettah, Chennai – 600 014 (Mobile 9600000036) Advocate as the Sole Arbitrator to decide the dispute between the petitioner and the respondents arising out of the Dealership Agreement dated 01.04.2018, on merits and in accordance with law.



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(b)The Arbitrator shall be paid his remuneration / fees in accordance with the 4th Schedule of the Arbitration and Conciliation Act, 1996.

(c)Both the parties shall equally share the Arbitrator's fees.

(d)The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

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Index:Yes/No

Speaking/Non-speaking orders



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ABDUL QUDDHOSE, J.

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