



Arb.O.P (Com.Div.) No.154 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.154 of 2023

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

... Petitioner

Vs.

Mr.Ganesan Murugesan,
Proprietor, Vinayaka Motors,
No.4, SSS Complex,
Mariamman Kovil Bye-pass Road,
Near Roundana, Thanjavur District,
Thanjavur 613 501.

... Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole Arbitrator to adjudicate the dispute between the petitioner and the respondent and to direct the respondent to pay the cost of this petition.

For Petitioner : Ms.Prapti Mehta
For Respondent : Mr.K.T.Sankar Subramanian



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ORDER

This petition has been filed to appoint a sole Arbitrator to adjudicate the dispute between the petitioner and the respondent.

2. The learned counsel for the petitioner would submit that the petitioner and the respondent had entered into a dealership agreement dated 03.01.2018 and as per the terms of the agreement, the petitioner supplied tractors, spare parts, tools to the respondent until February, 2022. Thereafter, due to non-payment of dues by the respondent, the petitioner had stopped the supply. In spite of several reminders, the respondent had not made any payment to the petitioner. Hence, a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) was sent to the respondent on 05.12.2022 and the same was received by the respondent on 03.01.2023. Thereafter, she had also sent a re-joinder to the respondent on 12.01.2023. However, since there is no response from the respondent, the present petition came to be filed.



3. Further, the learned counsel for the petitioner would submit that the present dispute is arising out of the dealership agreement dated 03.01.2018 and the same can be arbitrable in terms of Clause 14J of the said agreement, which reads as follows:

“14.MISCELLANEOUS:

.....

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 resolution of the dispute. Those disputes not resolved by negotiations, within the 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 Arbitration and Conciliation Act, 1996 as in force in India or any statutory modifications or reenactments thereof. The Courts at Ranipet/Vellore alone shall



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have exclusive jurisdiction in all matters arising out of this agreement.”

By referring the said clause, she would submit that the present dispute may be referred to Arbitration.

4. Per contra, Mr.K.T.Sankar Subramanian, learned counsel had entered appearance on behalf of the respondent and would submit that though the seat of the Arbitration is mentioned as Chennai, in the agreement, it has referred the Courts at Ranipet, Vellore to have exclusive jurisdiction. Therefore, he would submit that the petition under Section 11 of the Act shall be moved before the Courts at Ranipet, Vellore alone. In this regard, he referred to Section 2(e) of the Act, which reads as follows:

“2. Definition:-

.....

(e) "Court" means—

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration



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if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;”

5. In reply, the learned counsel for the petitioner had referred Section 11(3A) of the Act, which reads as follows:

“11. Appointment of Arbitrators:-

.....

(3A) The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under Section 43-I, for the purposes of this Act.”

By referring the said clause, she would submit that since the Act specifically empowers only the Hon'ble Supreme Court and High Courts to decide the



Arbitral Tribunal and hence, she would submit that only the High Court have jurisdiction for appointment of Arbitrator.

6. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

7. In view of the above, it is clear that the present dispute is arising out of the dealership agreement dated 03.01.2018 and the same is arbitrable under Clause 14J of the said agreement. The issue that has to be decided now is whether the present petition filed under Section 11 of the Act can be moved either before this Court or before the Courts at Ranipet, Vellore.

8. A reading of Section 11(3A) of the Act makes it clear that only the Supreme Court and the High Courts are empowered to take decision with regard to the Arbitral Tribunal and the District Court does not have any jurisdiction with regard to the same. Therefore, this Court is of the considered view that the submission made by the learned counsel for the respondent has no merit and the same is incorrect.



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9. In view of the above, this Court is satisfied that the present dispute is arising out of the said dealership agreement and the same is arbitrable in terms of Clause 14J of the loan agreement. Hence, this Court is inclined to appoint a sole Arbitrator.

10. Accordingly, this Court feels it appropriate to pass the following order:

i) The Hon'ble Mr.Justice K.Ravichandra Babu, Former Judge, Madras High Court, 1D, Crescent Castle, 13/b, II Crescent, Park Road, Gandhi Nagar, Adyar, Chennai 600 020, Mobile No:9444011433, is appointed as sole 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. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.



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iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.

11. With the above directions, this Arbitration Original Petition is allowed.

22.06.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation: Yes / No
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KRISHNAN RAMASAMY.J.,

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