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Arb.OP.(comdiv) No.192 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

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THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.192 of 2023

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

.. Petitioner

-VS-

Mr.K.G.Nataraj

.. 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 : Mr.T.M.Shivakumar

ORDER



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This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an Arbitrator.

2. The petitioner is a manufacturer and the respondent is a dealer. The dealership agreement dated 10.01.2019 has been entered into between the petitioner and the respondent, under which, the respondent was appointed as petitioner's dealer.

3. There seems to be a dispute between the parties arising out of the said dealership agreement dated 10.01.2019. There is an arbitration clause available in the dealership agreement dated 10.01.2019. In view of the dispute, the petitioner has invoked the arbitration in accordance with the arbitration clause through its notice dated 05.12.2022 and the respondent has received the said notice on 10.12.2022 as seen from the tracking sheet filed in the typed set of papers. Despite receipt of the same, the respondent has neither chosen to send a reply nor has appointed its arbitrator.

4. Even though Mr.T.M.Sivakumar, learned counsel for the



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respondent, who has appeared through Video Conference from Delhi, seeks further time to file vakalat on behalf of the respondent, this Court is not inclined to grant any further adjournment as this matter is listed for the fourth time. He would submit that no arbitrator was named by the petitioner in their invocation notice dated 05.12.2022 and therefore, the present petition is not maintainable.

5. However, learned counsel for the petitioner would submit that since the arbitration clause found in the dealership agreement dated 10.01.2019 enables the petitioner to appoint an arbitrator unilaterally, there was no necessity for the petitioner to name its arbitrator in the invocation notice dated 05.12.2022 and only under those circumstances, the petitioner was constrained to file this petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator.

6. The arbitration clause found in the dealership agreement dated 10.01.2019 is extracted hereunder:-

“J. Dispute Resolution :



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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 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.”



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7. When there is a valid arbitration agreement found in the dealership agreement dated 10.01.2019, necessarily this Court will have to appoint an arbitrator. Accordingly, this petition is allowed with the following directions:-

(a) This Court hereby appoints Mr.Suhrith Parthasarathy, Advocate, having office at No.1, Jagathambal Colony, 2nd street, Royapettah, Chennai – 14 (Mobile No.8939717592), as a sole Arbitrator to decide the dispute between the petitioner and the respondent arising out of the dealership agreement dated 10.01.2019.

(b) The Sole Arbitrator appointed by this Court shall be paid his 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.



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(e) It is made clear that all the contentions raised by the respondent with regard to the claim are kept open and the respondent is granted liberty to raise all the objections before the Arbitral Tribunal.

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ABDUL QUDDHOSE, J.

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