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ARB. O.P.(Com.Div) No.184 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.184 of 2023

Same Deutz Fahr India Private Ltd.,
Represented by Mr.P.Ramesh
No.72/72M/73-77,
SIPCOT Industrial Complex,
Ranipet - 632 403,
Tamil Nadu.

...

Petitioner

vs.

Rohit Mahadev Patil
Proprietor of M/s.Jay Motors,
Near Maiaaka Mandir,
Vita Sangli Road,
Vita
Taluka - Khanapur,
Dist. Sangli,
Maharashtra - 415 311.
Also at
'Shreya Niwas',
Datta Vasahat,
Ashta,
Taluka Walwa,
District Sangli - 416 301,
Maharashtra.

...

Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under



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

For petitioner	: Mrs. Prapti Mehta for M/s.Surana & Surana
For respondent	: Mr.Anant B.Bobe

ORDER

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

2. The petitioner is a Manufacturer and the respondent was its Dealer. The petitioner and the respondent entered into a Dealership Agreement, dated 10.01.2019. There seems to be a dispute arising out of the same. There is an arbitration clause contained in the Dealership Agreement, dated 10.01.2019, which 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 this Agreement,



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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 and 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. The petitioner had invoked the Arbitration clause by sending a notice to the respondent on 29.12.2022. The said notice according to the petitioner was received by the respondent on 31.01.2023. To substantiate the same, the petitioner has also filed the Tracking report issued by the Postal Department. The arbitration invocation notice dated



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29.12.2022 issued as per the provisions of Section 21 of the Arbitration and Conciliation Act, 1996 has not been responded to by the respondent.

Since there has been no consensus with regard to the name of the Arbitrator, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator.

4. A counter affidavit has been filed by the respondent denying the contentions of the petitioner. According to the respondent, the arbitration invocation notice dated 29.12.2022 was never received by the respondent. It is also contended that the respondent had intimated the petitioner about the change of his address by his e-mail, dated 14.07.2022 but despite the same, the petitioner had chosen to send the Arbitration Invocation Notice dated 29.12.2022 to the old address of the respondent. The Dealership Agreement dated 10.01.2019 has got expired and therefore, the present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 based on the Arbitration Clause contained in the expired Dealership Agreement is not maintainable. According to the respondent, the petitioner has not complied with the provisions of Section 21 of the Arbitration and Conciliation Act, 1996.

5. The learned counsel for the petitioner drew the attention of this



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Court to the Dealership Agreement and in particular she drew the attention of this Court to Clause 14C of the same and would submit that as seen from the said Clause, it is clear that any change of address of the respondent will have to be addressed to the petitioner to its Registered Office. According to her, it cannot be by way of an e-mail. She also drew the attention of this Court to the tracking report issued by the Postal Department, which confirms that the arbitration invocation notice dated 29.12.2022 has been duly received by the respondent on 31.01.2023. She would also point out that in respect of the date 31.01.2023, when the Postal Department have attempted to serve the notice, an endorsement has been made by the Postal Department, which discloses that the “item on hold - Door locked -intimation served”. Therefore, she would submit that it is very clear that the arbitration invocation notice dated 29.12.2022 was duly received by the respondent on 31.01.2023, as seen from the tracking report which confirms that the said notice has been received by the respondent.

6. On the other hand, the learned counsel for the respondent would submit that the arbitration invocation notice dated 29.12.2022, said to have been sent by the petitioner was never received by the respondent.

He drew the attention of this Court to the tracking report enclosed along



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with the Typed set of documents filed by the petitioner and would submit that the said endorsement has been made by the concerned Post Office for having received the arbitration invocation notice dated 29.12.2022, but the said endorsement does not reveal that the respondent had received the arbitration invocation notice dated 29.12.2022.

7. The learned counsel for the respondent also drew the attention of this Court to an E-mail, dated 14.07.2022 sent by the respondent to the employees of the petitioner Company intimating the change of address of the respondent. According to him, despite having intimated the change of address, the petitioner has chosen to send the Arbitration invocation notice dated 29.12.2022 to the old address of the respondent. According to him, the petitioner has not complied with the statutory requirements under Section 21 of the Arbitration and Conciliation Act, 1996. Hence, according to him, the present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, is not maintainable. He also drew the attention of this Court to a judgement rendered by a learned Single Judge of the Bombay High Court (Nagpur Bench) in the case of ***D.P. Construction vs. Vishvaraj Environment Pvt. Ltd., reported in MANU/MH/2206/2022*** and in particular, he relied upon paragraph 15 of



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the said judgment and would submit that the compliance of Section 21 of the Arbitration and Conciliation Act is mandatory and therefore, without complying the same, the present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 is not maintainable.

Discussion :

8. Admittedly, there is a valid arbitration clause in the Dealership Agreement dated 10.01.2019 entered into between the petitioner and the respondent which is the subject matter of dispute. The Arbitration Clause has also been extracted supra. Since, the arbitration clause enables the petitioner to appoint an Arbitrator unilaterally which is not legally permissible, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for an appointment of an Arbitrator. Prior to the issuance of the arbitration invocation notice, dated 29.12.2022, the petitioner had also sent a demand notice to the respondent on 23.06.2022 calling upon the respondent to pay the outstanding dues of the petitioner. The petitioner thereafter has issued the arbitration invocation notice, dated 29.12.2022 as per the provisions of Section 21 of the Arbitration and Conciliation Act, 1996 to the respondent calling upon the respondent to agree for arbitration in accordance with the arbitration clause contained in the Dealership



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Agreement dated 10.01.2019. The respondent has disputed the receipt of the arbitration invocation notice dated 29.12.2022 as seen from the counter affidavit filed by them before this Court as well as from the submissions made by the learned counsel for the respondent. In order to prove that the arbitration invocation notice dated 29.12.2022 has been duly received by the respondent, the petitioner has also filed a tracking report issued by the Postal Department which discloses that the respondent has received the arbitration invocation notice on 31.01.2023. Though the respondent disputes the receipt of the arbitration invocation notice dated 29.12.2022, this Court cannot decide the said dispute in an application filed under Section 11 of the Arbitration and Conciliation Act, when there is evidence to show that the arbitration invocation notice dated 29.12.2022 was received by the respondent as seen from the tracking report filed by the petitioner in the Typed set of documents filed along with this petition.

9. The learned counsel for the respondent has filed an e-mail, dated 14.07.2022 allegedly sent by the respondent to the petitioner's employees intimating them about the change of the respondent's address. The said e-mail is disputed by the learned counsel for the petitioner. Clause 14 C of the Dealership Agreement, dated 10.01.2019 also makes



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it clear that the respondent will have to intimate any change of address by sending a notice to the registered office of the petitioner. Clause 14C of the Dealership Agreement dated 10.01.2019 is extracted hereunder :

All notices given under this Agreement shall be effective upon 5 working days dispatch by speed post / registered post to the address of the other Party, as set here below. A party shall inform the other in writing should there be any change in the above address for receipt of notices.

If addressed to the Company :

Same Deutz-Fahr India (P) Limited. Plot No.72/72M/73-77, SIPCOT Industrial Complex, Ranipet-632403 Tamilnadu India

For the Attention of Managing Director.

If addressed to the Dealer:

M/s. JAY MOTORS

NEAR MAIAAKA MANDIR, VITA SANGLI ROAD, VITA, TALUKA-KHANAPUR, DIST SANGLI, PIN- 415311, MAHARASHTRA For the Attention of Mr. Rohit Mahadev Patil.

10. Therefore, this Court while deciding a petition under Section 11 of the Arbitration and Conciliation Act, 1996 will have to see as to whether there is a valid arbitration agreement or not and whether a notice was sent by the petitioner invoking arbitration in accordance with Section 21 of the Arbitration and Conciliation Act, 1996 or not. Only a prima



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facie consideration will have to be taken by this Court while deciding a petition under Section 11 of the Arbitration and Conciliation Act. A roving enquiry cannot be made by this Court, while deciding a petition under Section 11 of the Arbitration and Conciliation Act, 1996. The petitioner categorically contends that the arbitration invocation notice dated 29.12.2022 was duly received by the respondent and that they have complied with the provisions of Section 21 of the Arbitration and Conciliation Act, 1996. Though the respondent may dispute the same, when the petitioner has produced the tracking report to disclose that the respondent has received the arbitration invocation notice dated 29.12.2022, this Court while deciding an application under Section 11 of the Arbitration and Conciliation Act cannot disbelieve the tracking report. If at all the respondent is having any grievance with regard to the receipt of the arbitration invocation notice dated 29.12.2022, he can address the same before the Arbitrator as and when the Arbitral Tribunal is constituted. The judgment of the learned Single Judge of the Bombay High Court (Nagpur Bench) in the case of ***D.P. Construction vs. Vishvaraj Environment Pvt. Ltd., reported in MANU/MH/2206/2022*** referred to supra has no bearing to the facts of the instant case as the petitioner has produced proof to show that the arbitration invocation



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notice was received by the respondent and that they have complied with the requirements of Section 21 of the Arbitration and Conciliation Act.

The judgment of the Bombay High Court was a case where the petitioner did not comply with the provisions of Section 21 of the Arbitration and Conciliation Act and therefore the said judgment has no bearing for the facts of the instant case.

11. With regard to the submission made by the learned counsel for the respondent with regard to the expiry of the contract, the said submission is also not maintainable in view of the fact that the claim made by the petitioner arises only out of the Dealership Agreement dated 10.01.2019. Though the Dealership Agreement may have got expired, the claim made by the petitioner arises only out of the same and therefore, as per the Dealership Agreement which contains an arbitration clause, the petitioner is entitled to file an application under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator. Therefore, the contention of the respondent that in respect of an expired Dealership Agreement, which contains an arbitration clause, an application under Section 11 of the Arbitration and Conciliation Act, 1996 is not maintainable, has to be rejected.

12. For the foregoing reasons, this Court is of the considered view



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that there being a valid arbitration agreement between the petitioner and the respondent and the petitioner having invoked the same by issuing a notice on 29.12.2022 to the respondent, which on a prima facie consideration is received by the respondent, this Court will have to necessarily appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

13. For the foregoing reasons and in view of the fact that an Arbitration clause is available under the Dealership Agreement, this Court appoints Dr.P.Vasudevan, Advocate as the Sole Arbitrator to decide the dispute between the petitioner and the respondent. Accordingly, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:

(a) This Court appoints Dr.P.Vasudevan, Advocate, who is having office at No.20 (New No.47), St. Marys Road, Raja Annamalaipuram, Chennai - 600 028 (Mobile No.9444049042) 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 Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and



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Conciliation Act, 1996.

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(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 order / Non speaking order
Neutral citation : Yes / No
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ABDUL QUDDHOSE, J.

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