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Arb.O.P.(Com. Div.) No.238 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.238 of 2023

Same Deutz Fahr India Private Limited,
Representated by P.Ramesh.

... Petitioner

Vs.

Anmol Vitthal Abhang,
Proprietor of M/s.Sai Shraddha Tractors,
Shevgaon Road,
Kukana Post (Newasa),
District, Ahmednagar,
Maharashtra - 414 604.

Also at:

T P/O - Kukana,
Tal - Neawasa, Ahmednagar,
Maharashtra - 414 604.

... Respondent

PRAYER: Petition filed under Section 11 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.

For Petitioner : Ms.Prapti Mehta

For Respondent : Mr.Suyesh Palande



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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 the manufacturer and the respondent is its dealer. A dispute has arisen out of the dealership agreement dated 10.01.2019 entered into between the parties. The dealership agreement contains an arbitration clause which is extracted hereunder:

"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 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 has invoked arbitration in accordance with the arbitration clause by issuing a notice to the respondent on 14.03.2023. The said notice has also been returned with an endorsement 'refused', which amounts to deemed service. Since there has been no consensus between the parties with regard to the name of the arbitrator, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996,



seeking for appointment of an arbitrator by this Court.

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4. Notice has been served on the respondent in this petition and the respondent is represented by a learned counsel. The respondent is yet to file its counter in this petition. Sufficient opportunities have already been granted by this Court to the respondent to file its counter, but, despite the same, till date, counter has not been filed. The learned counsel for the respondent, however, submits that since the dealership agreement dated 10.01.2019 has not been signed by the petitioner, the present petition is not maintainable. However, the learned counsel for the petitioner would submit that the agreement was infact signed by the petitioner and that the respondent has also acted upon the said agreement by becoming the dealer of the petitioner. Therefore, the submissions made by the learned counsel for the respondent that the present petition is not maintainable, has to be rejected by this Court.

5. In support of the learned counsel for the petitioner's submission, she has also placed before this Court a Judgment of the Honourable Supreme Court in the case of ***Caravel Shipping Services Private Limited Vs. Premier Sea Foods Exim Private Limited*** reported in ***2019 (11) SCC***



461, wherein, in paragraph No.8, it has been held that it is sufficient that an arbitration agreement needs to be in writing but it need not be signed.

Paragraph No.8 of the aforesaid decision of the Honourable Supreme Court is extracted hereunder:

"8. In addition, we may indicate that the law in this behalf, in Jugal Kishore Rameshwardas Vs. Goolbai Hormusji, is that an arbitration agreement needs to be in writing though it need not be signed. The fact that the arbitration agreement shall be in writing is continued in the 1996 Act in Section 7 (3) thereof. Section 7 (4) only further adds that an arbitration agreement would be found in the circumstances mentioned in the three sub-clauses that make up Section 7 (4). This does not mean that in all cases an arbitration agreement needs to be signed. The only pre-requisite is that it must be in writing, as has been pointed out in Section 7 (3)."



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6. Admittedly, the respondent was a dealer under the petitioner and they have also signed the dealership agreement dated 10.01.2019 which discloses that the petitioner is the manufacturer. While that be so, when the respondent has acted upon the dealership agreement dated 10.01.2019, they are bound by the terms and conditions of the said agreement which includes the arbitration clause.

7. The Decision of the Honourable Supreme Court relied upon by the learned counsel for the petitioner referred to supra, squarely applies to the facts of the instant case. As seen from the decision of the Honourable Supreme Court, it is clear that it would suffice if the arbitration agreement is in writing and in certain cases it need not be signed when there are supporting evidences to show that the parties have agreed upon the arbitration clause. Therefore, the contentions of the learned counsel for the respondent is rejected by this Court.

8. When this Court had expressed its view that this petition will have to be allowed, the learned counsel for the respondent has placed before this Court similar orders passed in respect of other dealership agreement,



wherein, this Court had appointed Mr.Keerthikiran Murali, Advocate, as an arbitrator to adjudicate the dispute between the parties. He would request this Court to appoint the very same arbitrator to adjudicate this dispute also. Learned counsel for the petitioner has no objection for the same.

9. For the foregoing reasons and in view of the fact that an Arbitration clause is available under the Dealership Agreement dated 10.01.2019, this Court appoints Mr.Keerthikiran Murali, 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 Mr.Keerthikiran Murali, Advocate , who is having office at No.22, M.G. Ramachandran Road, Kalashetra Colony, Besant Nagar, Chennai - 600 090 (Mobile No.96554 46098) 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 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 Order : Yes / No
Neutral Citation Case: Yes / No
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