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Arb.O.P.(Com. Div.) No.243 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.243 of 2023

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

... Petitioner

Vs.

M/s.CBRS Agro Machinery
Proprietorship concern, through
Chinnamani Sakthivel,
No.509, Veppur Main Road,
Komangalam, Paravalur,
Virudhachalam, Paravalur,
Virudhachalam Tk, Cuddalore,
Tamil Nadu - 606 001.

Also at:

No.1/182, East Street, Nuraiyur,
Manakudi Post, Ariyalur - 621 705.

... 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.K.T.Sankar Subramanian



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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 matter is listed before me for the 3rd time. Counter has also not been filed. The learned counsel for the respondent also submits that he will argue the matter without a counter. The said statement is recorded.

3. The petitioner is the manufacturer and the respondent is its dealer. They have entered into a dealership agreement dated 10.01.2019. There seems to be a dispute arising out of the same. The petitioner has invoked arbitration in accordance with the arbitration clause contained in the dealership agreement by issuing a notice to the respondent on 23.01.2023. The respondent has duly acknowledged the receipt of the same, but, has chosen not to respond to the same.

4. Since there has been no consensus between the parties with regard to the name of the arbitrator, this petition has been filed under Section 11 of



the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator by this Court.

5. The arbitration clause contained in the dealership agreement dated 10.01.2019 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



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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."

6. The petitioner has also invoked arbitration in accordance with the aforementioned arbitration clause by issuing a notice to the respondent on 23.01.2023, which has been duly acknowledged by the respondent. In the said notice dated 23.01.2023, the respondent was also called upon to come for mediation / negotiation. But, despite receiving the said notice, the respondent has, admittedly, not approached the petitioner for negotiation / mediation and has also not chosen to reply with regard to the contentions raised by the petitioner in the arbitration invocation notice dated 23.01.2023. Therefore, it is clear that the respondent was not interested to negotiate / mediate with the petitioner in terms of the arbitration clause which has been extracted supra.

7. The learned counsel for the respondent also admits the existence of the arbitration clause in the dealership agreement dated 10.01.2019 which



has been extracted supra. However, he would submit that the respondent is willing for mediation in terms of the arbitration clause. Having not chosen to respond to the arbitration invocation notice dated 23.01.2023 sent by the petitioner, which called upon the respondent to come for mediation, the respondent is now estopped from submitting that the respondent is willing for mediation now. In view of the same, the contention of the learned counsel for the respondent is rejected by this Court.

8. Since there is a valid arbitration agreement and since the petitioner has invoked arbitration by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996, on 23.01.2023, which has been duly acknowledged by the respondent, this Court will have to necessarily appoint an arbitrator.

9. For the foregoing reasons and in view of the Arbitration clause available under the Dealership Agreement dated 10.01.2019, this Court appoints Hon'ble Ms.Justice Indira Banerjee (Former Judge of The Supreme Court of India) as the Sole Arbitrator to decide the dispute between the petitioner and the respondent. Accordingly, this Arbitration Original Petition



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is allowed as prayed for by issuing the following directions:

- (a) This Court appoints Hon'ble Ms.Justice Indira Banerjee, Former Judge of The Supreme Court of India, who is having office at No.C2, Greater Kailash Enclave - 1, New Delhi - 110 048 (Mobile No.95608 08777) 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 remuneration / fees as per the schedule agreed upon by the parties to the dispute;
- (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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ABDUL QUDDHOSE. J.,

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