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Arb.OP.(comdiv) No.264 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

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THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.264 of 2023

Same Deutz Fahr India Pvt. Limited,
Rep. By Mr.P.Ramesh
No.72/72M/73-77, SIPCOT Industrial Complex,
Ranipet – 632 403, Tamil Nadu. .. Petitioner

-VS-

Mrs.V.Rajalakshmi .. 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.Namasivayam



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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.

2. The petitioner is a manufacturer and the respondent was its dealer. The petitioner and the respondent had entered into a dealership agreement dated 03.01.2018. There seems to be a dispute between the parties arising out of the said agreement dated 03.01.2018. There is an arbitration clause available in the dealership agreement dated 03.01.2018, 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



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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 the arbitration clause by issuing a notice dated 23.01.2023 to the respondent. The said invocation notice has been returned with an endorsement “no such person”.

4. Till date, no counter affidavit has been filed in this application. However, the learned counsel for the respondent would submit that the



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arbitration clause enables the petitioner to appoint an arbitrator unilaterally.

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5. The said contention will have to be rejected due to the reason that the petitioner has approached this Court under Section 11 of the Arbitration and Conciliation Act, 1996, only on the ground that unilateral appointment of an arbitrator is not legally permissible. Therefore, there cannot be any prohibition for this Court to appoint an arbitrator, when there is an arbitration clause available in the dealership agreement dated 03.01.2018.

6. The petitioner has adhered to the provisions of Section 21 of the Arbitration and Conciliation Act, 1996, by sending a notice dated 23.01.2023, invoking arbitration. Though the said notice has been returned with endorsement “no such person”, since the petitioner has adhered to the said provision, this Court will have to entertain this petition seeking for appointment of an arbitrator.

7. For the foregoing reasons, this petition is allowed with the following directions:-



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(a) This Court hereby appoints Mr.Thriyambak J.Kannan, advocate, residing at Briley-1, 8th floor, No.30, Ethiraj Salai, Egmore, Chennai -8 (Mobile No.9884624563), as the sole arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the dealership agreement dated 03.01.2018.

(b) The Sole Arbitrator appointed by this Court shall be paid 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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ABDUL QUDDHOSE, J.

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