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ARB.O.P.(Com.Div) No.274 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.274 of 2023

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

Vs.

Mr.Mohammed Ishaque
Sole Proprietor of M/s.Shakti Tractors
ARQ Complex, Near Old Bridge,
Wajegaon Road, Wajegaon,
Nanded – Hyderabad Road,
Nanded, Dist. - Nanded,
Maharashtra – 431 606.

Also at:
1-10-40, Datanagar, Cha Bhag Railway Patri
Khandoba Mandir, Hingoli Get,
Tawun Market, Datanagar,
Nanded – 431 605.

Also at:
H.No.7-3-815
Opposite Cotton Research Centre,
Degloor Naka Road – Nanded,
Near Baba Motors,
Maharashtra – 431 606. ... Respondent



ARB.O.P.(Com.Div) No.274 of 2023

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent and to direct the respondent to pay the cost of this petition.

For Petitioner : Ms.Prapti Mehta
for M/s.Surana & Surana

For Respondent : No appearance – Set *exparte*

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator by this Court.

2. Learned counsel for the petitioner has filed an affidavit of service. As seen from the affidavit of service which contains the tracking report issued by the Postal Authority as well as the returned cover, it is clear that the respondent has received the notice in one of his addresses but has returned the notice in respect of his other address.



ARB.O.P.(Com.Div) No.274 of 2023

3. Since the respondent has received the notice and did not appear before this Court, this Court is setting the respondent *exparte* in this petition. The name of the respondent is also printed in the cause list today.

4. The petitioner is a Manufacturer and the respondent is its Dealer. The petitioner and the respondent has entered into a Dealership Agreement dated 10.01.2019. There seems to be a dispute arising out of the same. The petitioner has also issued a notice on 18.02.2022 to the respondent, prior to initiating the arbitration. The Dealership Agreement dated 10.01.2019 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



ARB.O.P.(Com.Div) No.274 of 2023

WEB COPY

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.”

5. In accordance with the arbitration clause, the petitioner has also invoked arbitration on 03.02.2023 by issuing notice to the respondent. The notice has also been received by the respondent as seen from the tracking report. Despite the said notice, the respondent has not replied to the arbitration invocation notice dated 03.02.2023 sent by the petitioner. Since there is a valid arbitration agreement between the parties and in terms of the said agreement, the petitioner has also invoked arbitration by issuing notice to the respondent on 03.02.2023, this Court will have to necessarily appoint an Arbitrator to decide the dispute between the petitioner and the respondent.



ARB.O.P.(Com.Div) No.274 of 2023

6. For the foregoing reasons, this Court appoints Hon'ble Mr.Justice S. Rajeswaran (Retd), Former Judge of this Court, as a Sole Arbitrator, to adjudicate the dispute between the parties arising out of the Dealership Agreement dated 10.01.2019. Accordingly, this Arbitration Original Petition is allowed as prayed for, by issuing the following directions:-

(a) This Court appoints Hon'ble Mr.Justice S. Rajeswaran (Retd.), Former Judge of this Court, having Office at No.AA-67, II Street, Near Roundtana Nalli Silk House, Anna Nagar, Chennai – 600040, Mobile No.:9444390952, as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the Dealership Agreement dated 10.01.2019, on merits and in accordance with law.

(b) The Arbitrator shall be paid his 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.



WEB COPY



ARB.O.P.(Com.Div) No.274 of 2023

ABDUL QUDDHOSE, J.

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(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.

25.08.2023

Index: Yes/ No
Speaking/Non-speaking Order
Internet: Yes/No
Neutral Citation: Yes/No

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Arb.O.P.(Com.Div) No.274 of 2023