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ARB.O.P.(Com.Div) No.300 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.300 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.

1.M/s.SS Motors,
Partnership Firm,
Having office at
278/12-L, Kalyan Nagar, Thurayur Road,
Perambalur, District Perambalur,
Tamil Nadu – 621 212.

2.Mrs.V. Selvi,
Partner M/s.SS Motors,
278/12-L, Kalyan Nagar, Thurayur Road,
Perambalur, District Perambalur,
Tamil Nadu – 621 212.

Also at:
278/G6, Kalyan Nagar,
Thuraiyur Road, Perambalur District – 621 212.

Also at:
138A, Krishnapuram Main Road,
Ward – 5, Vengalam(p),
Perambalur – 621 116.



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Also at:

Door No. New No.5/120, Krishnapuram West,
Krishnapuram PO, Veppanthattai TK,
Perambalur DT,
Tamil Nadu – 627 116.

3.Mrs.K. Suseela,
Partner M/s.SS Motors,
278/12-L, Kalyan Nagar, Thurayur Road,
Perambalur, District Perambalur,
Tamil Nadu – 621 212.

Also at:

Old No.5/23, New No.5/128,
Krishnapuram West, Krishnapuram Post,
Veppanthattai Taluk,
Perambalur District – 627 116.

Also at:

No.20C, Krishnapuram,
Vengalam, Veppanthattai Taluk,
Perambalur – 621 116.

... Respondents

Prayer : Arbitration Original Petitions (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 respondents and to direct the respondents to pay the cost of this petition.

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

For Respondents : Mr.C.D. Johnson



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ORDER

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

2. The petitioner is the Manufacturer and the first respondent is its Dealer. The respondents 2 and 3 are the partners of the first respondent. They have entered into a Dealership Agreement dated 10.01.2019. There seems to be a dispute arising out of the same. The petitioner claims that certain sums of money are due and payable by the respondents under the Dealership Agreement dated 10.01.2019 and they have raised a dispute. There is an arbitration clause available 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, 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



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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 & 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. In accordance with the arbitration clause, the petitioner has also invoked arbitration on 27.01.2023 by issuing notice to the respondents. A reply has also been sent by the respondents on 02.02.2023 to the said notice. Since there is no consensus between the parties with regard to the name of the Arbitrator, this petition has been filed, seeking for appointment of an Arbitrator by this Court.



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4. A counter-affidavit has been filed by the respondents denying the allegations of the petitioner and disputing their liability to the petitioner as claimed in the arbitration invocation notice dated 27.01.2023. However, with regard to the existence of the arbitration clause available in the Dealership Agreement dated 10.01.2019, which is the subject matter of dispute, the respondents have not disputed the existence of the same.

5. The contentions of the respondents with regard to the merits of the petitioner's claim can be adjudicated only by the Arbitrator and not by this Court while exercising its powers under Section 11 of the Act. Accordingly, this Court will have to take only a *prima facie* view with regard to the existence of an arbitration clause in the subject matter of dispute namely the Dealership Agreement dated 10.01.2019.

6. Admittedly, since there is an arbitration clause available in the Dealership Agreement dated 10.01.2019 which is the subject matter of dispute and since there is no consensus between the parties with regard to the name of the Arbitrator, this Court will have to necessarily appoint an Arbitrator to decide the dispute between the petitioner and the respondents.



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7. For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for, by issuing the following directions:-

- (a) This Court appoints Mr.M.V. Swaroop, Advocate, having Office at 17/5, Krishna Street, T. Nagar, Chennai – 17, Mobile No:9003263741, as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondents arising out of the Dealership Agreement dated 10.01.2019.
- (b) The Arbitrator shall be paid his remuneration/fees in accordance with the IV Schedule of the Arbitration and Conciliation Act, 1996.
- (c) Both the parties shall equally share the Arbitrator's fees and in the event of the failure on the part of any of party to pay the share of the Arbitrator's fees, the other party shall pay the same and recover the same from the other party who had not paid the sum.



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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.

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Index: Yes/ No

Speaking/Non-speaking order

Internet: Yes/No

Neutral Citation: Yes/No

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ABDUL QUDDHOSE, J.

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