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Arb.O.P(Com.Div.)No.498 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.498 of 2023

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

... Petitioner

Vs.

1. M/s.K.P.Tractors,
Partnership Firm represented by its Partner,
Mr.Jayeshkumar Kanjibhai Patel,
Shop No.1, Harikrushna Township,
Paliyad Road, Botad,
Gujarat – 364 710.

2. Mr.Jayeshkumar Kanjibhai Patel,
Partner, M/s.K.P.Tractors,
Shop No.1, Harikrushna Township,
Paliyad Road, Botad,
Gujarat – 364 710.

Also at:

C/o Darbargadhat Post Pirpardi
Tal Jasdan, Rajkot – 360 055

Also at:

A-06, Anand Complex, Near Sola Over Bridge,
SG Highway, Ahmedabad – 380 055.



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3. Mrs. Vanitaben Bharatbhai Patel,
Partner, M/s.K.P.Tractors,
Shop No.1, Harikrushna Township,
Paliyad Road, Botad,
Gujarat – 364 710.

Also at:
Chitaliya Road, Umiya Nagar,
Jasdan, Rajkot, Jasdan,
Gujarat – 360 050.

Also at:
297, Main Bazar, Pipardi – 2,
Pipardi, Jasdan, Dist-Rajkot,
Gujarat – 360 055.

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, as amended upto date, praying to appoint a sole Arbitrator to adjudicate 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 G.Kalyan Jhabakh
For Respondents	: Ms.S.R.N.Manusri

ORDER

The petitioner has filed this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking to appoint an Arbitrator to adjudicate between the petitioner and the respondents.



2. Despite notice being served on the respondents, the respondents have not come forward to file a Counter Affidavit in this petition filed for Appointment of Arbitrator.

3. The facts on record indicate that the petitioner and the respondents have signed a Dealership Agreement on 10.01.2019. The dispute arising out of arrangement is arbitrable in terms of Clause 14(J) of the Dealership Agreement dated 10.01.2019. Clause 14 J of the aforesaid Dealership Agreement reads as under:-

“14. 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 Comppany, who may be authorized 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.”



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4. The petitioner has issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 challenging the alleged defaults made by the respondents under the aforesaid Dealership Agreement dated 10.01.2019.

5. The respondents have also responded to the same on 12.07.2023. In the aforesaid reply dated 12.07.2023, the respondents have not categorically denied the liability under the agreement.

6. On the other hand, the respondents have agreed and had stated that on 19.09.2019, the respondents were ready to pay a sum of Rs.21,67,122/- to the petitioner which was refused.

7. Thus, the dispute between the parties is arbitrable and there can be no objection to Appointment of an Arbitrator although the learned counsel for the respondents would submit that the Agreement dated 10.01.2019 is not binding on the respondents.



8. Having considering the gravity of the dispute and the amount involved, Court is inclined to appoint **Mr.M.V.Swaroop, Advocate, (Cell No.9003263741) having Office at No.17/5, Krishna Street, T.Nagar, Chennai-17** as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

9. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve (12) months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

10. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.



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C.SARAVANAN, J.

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11. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

12. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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