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Arb. O.P(Com.Div). No.661 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.661 of 2022

TVS Motor Company Limited,
Rep. By its DGM – Legal, K.Pradeep,
Regd. Off. At “Chaitanya”, No.12,
Khader Nawaz Khan Road,
Nungambakkam,
Chennai – 600 006.
and having one of its factories at:
Post Box No.4 Harita,
Hosur – 635 109.

... Petitioner

Vs.

M/s.Bansal Auto,
Through its Sole Proprietor,
Mr.Brji Bhushan Bansal,
Janta Hospital Road,
Dabwali Road,
Sirsa – 125 055, Haryana

... Respondent

PRAYER : Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a sole arbitrator to adjudicate the disputes between the parties arising out of the Authorised Main Dealership Agreement dated 01.04.2018.



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For Petitioner : Mr.Anirundh Krishnan

For Respondent : Mr.Avinesh Wadhwani

ORDER

This petition has been filed under Section 11(5) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint an Arbitrator to adjudicate the disputes between the parties arising out of the Authorised Main Dealership Agreement dated 01.04.2018.

2.The case of the petitioner is that the petitioner and the respondent entered into an Authorised Main Dealership Agreement (hereinafter referred as “the AMD agreement”) dated 01.04.2018, at Hosur, whereunder the respondent was appointed as an Authorised Main Dealer of the petitioner at Sirsa, Haryana to market the products manufactured by the petitioner and the terms of the AMD agreement was expired by efflux of time on 30.09.2018. Thereafter, at the sole discretion of the petitioner, the terms of the AMD agreement was extended vide renewal letters dated 01.08.2018, 01.07.2019 and 19.05.2020. In the letter dated 19.05.2020, the petitioner had categorically stated that the extension granted thereunder was the last and final extension and there would be no



further extension of the AMD agreement beyond 30.09.2020 and thus, the AMD agreement was finally expired on 30.09.2020.

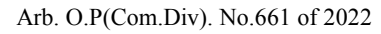
3.After the expiry of the AMD agreement on 30.09.2020, contrary to Clause 21.3 of the said agreement, the respondent has been representing to the general public that they are still the Authorised Main Dealer of the petitioner Company at Sirsa, Haryana. In view of such state of affairs, the petitioner was constrained to issue a notice dated 12.01.2022 to the respondent calling upon to:

(a) Forthwith do all necessary acts, deeds and things to cease and desist from using the trademark, “TVS”, in any manner whatsoever and in particular in relation to the respondent's business/products and refrain from committing infringement of the petitioner's well-known trademark of “TVS”.

(b) Remove all reference to the petitioner's trademark, “TVS” in the respondent's display board and invoices, and,

(c) Pay a sum of Rs.1,00,00,000/- (Rupees One Crore) as special damages within a period of 7 days from the receipt of the said notice.

4.Even after the receipt of the said notice, the respondent failed to comply with demands made by the petitioner and therefore, the petitioner



5.Learned counsel appearing for the petitioner would submit that even after the termination of the terms and conditions of the AMD agreement, the respondent continued to represent themselves as the Authorised Main Dealer of the petitioner Company. The respondent has not replied to any of the notice sent by the petitioner. However, the respondent has moved an Arbitration Petition No.427 of 2022 before the Punjab and Haryana High Court. Since, the substantial part of cause of action aroused within the jurisdiction of this Court, the petitioner has come up with the present petition seeking to appoint a Sole Arbitrator and he prayed to allow the same.



6. On the other hand, learned counsel appearing for the respondent, vehemently opposed for appointment of Arbitrator. He would submit that the present dispute is a trademark dispute, which is beyond the scope of the AMD agreement. The allegation levelled by the petitioner against the respondent is not true and hence, he prayed for dismissal of the present petition. Though he has vehemently opposed for appointment of Arbitrator, at the time of completing his arguments, he submitted that in the event, the Court decides to appoint a Sole Arbitrator, the venue for conducting arbitration proceedings may be fixed at Chennai.

7. Heard the learned counsel appearing for the petitioner as well as the respondent and perused the materials available on record.

8. For better appreciation, Clause 27 of the AMD Agreement is reproduced hereunder:

“Clause 27

Dispute Resolution

27.1 All disputes, differences, controversies or claims arising out of or relating to this Agreement or other contract/s or document/s or arrangement/s between the Parties hereto in relation to the transactions under or



pursuant to this Agreement, either during their subsistence or thereafter (The Dispute) shall be settled in the following manner.

27.2 A Dispute will be deemed to arise when one Party serves on the other Party a notice stating the nature of the Dispute (a 'Notice of Dispute').

27.3 No dispute/s other than Dispute/s raised in Notice of Dispute can be taken or agitated by the Party causing such a Notice of Dispute, in the arbitration ensuing such Notice of Dispute, and as contemplated in Clause 27.6 below.

27.4 The Parties hereto agree that they may use all reasonable efforts to resolve the Dispute as contained in the Notice of Dispute through Conciliation in the manner as provided herein below.

27.5 Agreement in relation to 'Conciliation': The Dispute as contained the Notice of Dispute may be referred to Conciliation of a conciliator to be selected/ appointed by the Chairman and Managing Director of the Company or the person nominated by him in that behalf. The Conciliator so appointed shall conduct the proceedings in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof. Such Conciliation shall be conducted in English language and the



venue of Conciliation shall be either in Hosur or at such other place/venue as it is convenient for the Conciliator.

27.6 The Dispute as contained in the Notice of Dispute which could not be settled by the Parties through Conciliation (if preferred) after the period of thirty (30) Days from the service of the Notice of Dispute, shall be finally settled by Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or its statutory amendments thereof, and:

a) All proceedings of arbitration shall be conducted in English;

b) The arbitral tribunal shall comprise of a sole arbitrator selected by the Chairman and Managing Director of the Company or any other person nominated by the Chairman and Managing Director in this regard (hereinafter referred to as the 'Appointing Authority'); however, the Company may at its sole discretion it requires resolution of the Dispute/s by an arbitral tribunal comprising of three (3) arbitrators, then, one arbitrator to be selected by the Company, the other arbitrator to be selected by the AMD, and the third arbitrator to be selected by the two arbitrators appointed by the Company and the AMD, who shall serve as Presiding Arbitrator of the Arbitral Tribunal;



c) In no event, the power/ authority of Appointing Authority in selecting appointing arbitrator can be challenged or questioned. The Appointing Authority gets the power and authority on the mutual agreement under this clause to select / arbitrator at its choice and the same can be exercised by the appointing authority in the manner it deems fit. The Appointing Authority need not subject itself to any general or specific procedure in the matter of appointment of arbitrator;

d) Upon the Arbitral Tribunal entering the Dispute to referred to it, it shall have full, complete and valid jurisdiction as enshrined in the Arbitration and Conciliation Act, 1996 and/or any other modifications/amendments thereof, to adjudicate/resolve the Dispute;

e) The venue of arbitration may be in Hosur or any other venue as per the choice of the arbitral tribunal; and

f) The costs of arbitration shall be initially borne equally by the Parties to it and when the arbitral tribunal awards any cost, interest in favour of a Party, the Party who is directed by the arbitral award/order/s of the arbitral tribunal shall finally bear the same and han the award in letter and spirit."



9. In view of the above submissions and a perusal of Clause 27 of the AMD Agreement, it is clear that the present dispute is arbitable in terms of the said agreement. It is also seen that when the petitioner has come before this Court for appointment of Arbitrator, in a similar way, the respondent also approached the Punjab and Haryana High Court by filing a petition under Section 11 of the Act for appointment of arbitrator. Though the learned counsel appearing for the respondent vehemently opposed for allowing the present petition, it appears that the respondent also intent to appoint an Arbitrator to resolve the dispute and that is the reason why both the parties have filed a petition under section 11 of the Act in different High Courts. Admittedly, till date no order has been passed with regard to the appointment of Arbitrator in the petition filed by the respondent before the Punjab and Haryana High Court. Further, learned counsel appearing for the respondent also suggested that, in the event the Court intent to appoint an Arbitrator, the venue of the arbitration proceedings may be fixed at Chennai. Under such circumstances, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondent.

10. Accordingly, **Mr.T.Ravindren, Former Judge, Madras High Court, residing at New No.27, Old No.12, III Avenue, Indira Nagar, Adyar,**



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Chennai – 600 020, (Contact No.9941350926), is appointed as the Arbitrator

to enter upon reference and adjudicate the disputes *inter se* the parties. The arbitration proceedings shall be conducted at Chennai as well as at the seat of Arbitration, as agreed by both the parties. The parties are at liberty to raise all their issues before the learned Arbitrator. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order, without influencing any of the observations made by this Court in this order. The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

11.This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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