



Arb.Original Petition (Com.Div.) No. 25 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

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TVS Motor Company Limited,
Regd. Off. at "Chaitanya", No.12,
Khader Nawaz Khan Road,
Nungambakkam,
Chennai - 600 006.
Rep. by its DGM - Legal, K.Pradeep

... Petitioner

Vs.

J.K.Automobiles,
Rep. by its Proprietor,
Mr.Jitendra Kumar Singh,
Zeera Basti, Gorakhpur Road,
Ballia - 277 001, Uttar Pradesh.

... Respondent

PRAYER: The Original Petition has been filed under Section 11 (5) of Arbitration and Conciliation Act, 1996, to appoint an Arbitrator in accordance with Clause 27 of the Authorized Dealer Agreement dated 28.09.2018 to adjudicate upon the disputes that have arisen between the parties in relation to the said Agreement.



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For Petitioner : Mr.Muthucharan Sundresh

For Respondent : No appearance

ORDER

The present Original Petition has been filed to appoint an Arbitrator in accordance with Clause 27 of the Authorized Dealer Agreement dated 28.09.2018 to adjudicate upon the disputes that have arisen between the parties in relation to the said Agreement.

2. The learned counsel appearing for the petitioner submits that the petitioner is a Company incorporated under the provisions of the Companies Act, 1956 and subsisting under the Companies Act, 2013 and is a leading manufacturer of various models of powered two and three-wheelers, their spares, components, accessories, etc. The petitioner sells its products by appointing many Dealers (for vehicles and spare parts) and by appointing Parts Stockists throughout India. In this circumstance, the petitioner and the respondent had entered into an Authorized Main Dealership Agreement dated 28.09.2018 stipulating all the details, terms and conditions that the respondent was required to fulfill as an Authorized Main Dealer of the petitioner Company.



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3. The learned counsel for the petitioner further submits that pursuant to the Authorized Main Dealership Agreement, the respondent had been purchasing vehicles, spare parts and lubricant oil from the petitioner on credit basis. The primary dispute revolves around the fact that the respondent, after having purchased products from the petitioner on a credit basis, failed to clear payments despite several reminders. The petitioner sent a notice under Section 21 dated 22.06.2022 to the respondent stating that the respondent has defaulted on payment of Rs.26,98,052.41 attaching a copy of the statement of account revealing the outstanding amount payable by the respondent. Even after receiving the notice, the respondent has not sent any reply to the petitioner. Hence, without any other option, the present petition is filed by the petitioner, and requested to appoint a retired High Court Judge as Sole Arbitrator.

4. The learned counsel for the petitioner further submits that in terms of Clause 27.6 of the Dealership Agreement dated 28.09.2018, the present dispute can be referred to the Arbitrator. The said Clause is extracted as follows:-



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"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 if 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/appoint



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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 so 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 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 party, the party who is directed by the arbitral award/order/s of the arbitral tribunal shall finally bear the same and honour the award in letter and spirit."

5. This Court, on 24.01.2023, ordered notice to the respondent and the same has also been served on the respondent. The name of the respondent is also printed in the cause list, but, none appeared on behalf of the respondent. It shows that the respondent is not interested to pursue his case.



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6. In these circumstances, this Court is of the considered view that the present dispute squarely falls within the scope of the Dealership Agreement dated 28.09.2018. Hence, this Court is inclined to appoint a sole Arbitrator to decide the issue that is involved in this case and accordingly, ***Hon'ble Mr. Justice V. Bharathidasan, Former Judge, High Court of Madras, residing at No.22 (L-45), 2nd Main Road, Kamaraj Nagar, Thiruvananthapuram, Chennai - 600 041, Mobile No.9444383139,*** is appointed as Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. 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 (6) months from the date of receipt of the Order.

7. The learned counsel appearing for the petitioner submits that in terms of Arbitration Clause, the venue can be decided by this Court. Considering the request of the learned counsel appearing for the petitioner, the arbitration shall be conducted in the Arbitration and Conciliation Centre under the aegis of this Court (MHCAC) in accordance with the Madras High Court Arbitration Proceedings Rules, 2017. The learned Sole Arbitrator appointed



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herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

8. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. It is open to the parties to raise all the issues, which have been put forth before this Court and the learned Arbitrator is directed to decide the issue between the parties on his own, without taking any observation made in this order.

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KRISHNAN RAMASAMY, J.

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