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Arb. O.P(Com.Div). No.41 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div).No.41 of 2023

TVS Motor Company Limited,
Regd. Off. At “Jayalakshmi Estates”
No.29, Haddows Road,
Chennai – 600 006.

... Petitioner

Vs.

1.M/s.Sai Motors,
S.No.182, 183 PH Road,
Ondikuppak, Manavalan Nagar,
Tiruvallur – 602 002.

2.Indurani
Partner, M/s.Sai Motors,
S.No.182, 183 PH Road,
Ondikuppak, Manavalan Nagar,
Tiruvallur – 602 002.

3.Syed Ghulam Dustagir,
Partner, M/s.Sai Motors,
S.No.182, 183 PH Road,
Ondikuppak, Manavalan Nagar,
Tiruvallur – 602 002.

... Respondents

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



from the panel of nominees suggested by the petitioner to the respondent vide Arbitrator Appointment Notice dated 06.02.2021, in accordance with Clause 27.6 of the Authorised Main Dealership Agreement dated 17.11.2017 as renewed or such other person, to adjudicate upon the disputes that have arisen between the parties in relation to the said Agreement as outlined in the Arbitrator Appointment Notice.

For Petitioner : Mr.Sriram Srinivasan
for Mr.Rahil Balaji

For Respondents : No Appearance

ORDER

This petition has been filed under Section 11(5) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint a Sole Arbitrator from the panel of nominees suggested by the petitioner to the respondent vide Arbitrator Appointment Notice dated 06.02.2021, in accordance with Clause 27.6 of the Authorised Main Dealership Agreement dated 17.11.2017 as renewed or such other person, to adjudicate upon the disputes that have arisen between the parties in relation to the said Agreement as outlined in the Arbitrator Appointment Notice.



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2.Though notice served on the respondents and the name of the respondents are printed in the causelist, none appeared on behalf of them, which shows that the respondents are not interested to contest the case. Hence, this Court proceeds to pass orders.

3.Learned counsel appearing for the petitioner would submit that the petitioner Company is in the business of manufacturing and marketing two- and three-wheelers, its spare parts, accessories and components. The petitioner and the 1st respondent entered into an Authorised Main Dealership Agreement dated 17.11.2017 and the same was renewed from time to time. Respondents 2 and 3 are the partners of the 1st respondent. Under the said agreement, respondents have been purchasing vehicles, spare parts and lubricant oils from the petitioner. However, the respondents defaulted the payments and as on 20.08.2020, a sum of Rs.64,47,562/- along with interest at 18% p.a was outstanding and payable by the respondent. Despite several demands were made by the petitioner, the respondents never turned up to make the payment. Therefore, notice under Section 21 of the Act has also sent to the respondents on 21.08.2020 calling upon the respondents to make the payment within 10



days and through the same notice it was intimated to the respondents that the Arbitration Clause 27 of the said Dealership Agreement is being invoked to refer the disputes for arbitration.

4.By referring the above Clause 27.6 of the Dealership Agreement dated 17.11.2017, learned counsel appearing for the petitioner would submit that the said dispute is arbitrable and as per the said Clause, the Arbitrator can be nominated by the Chairman and Managing Director of the petitioner. However, since the Hon'ble Apex Court in the case of ***Perkins Eastman Architects DPC and Ors. vs. HSCC (India) Ltd.***, reported in ***(2020) 20 SCC 760***, has held that a person having an interest in the dispute or in the outcome or decision thereof must not only be ineligible to act as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator, the petitioner approached this Court for appointment of Arbitrator.

5.For better appreciation, Clause 27.6 of the Dealership Agreement dated 17.11.2017, is reproduced hereunder:

“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 required 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 question. The Appointing Authority gets the power and authority on the mutual agreement under this clause to select/appoint 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 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;

(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 honour the award in letter and spirit.”

6.Considering the submissions made by the learned counsel appearing for the petitioner and in view of the fact that the present dispute is arising out of the Dealership Agreement dated 17.11.2017, and the same is arbitrable under Clause 27.6 of the said agreement, this Court is inclined to appoint a sole Arbitrator and pass the following orders:

i) Accordingly, **Mr.D.Selvaraju, Advocate, New**



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No.31, Parameshwari Nagar, 1st Street Adyar, Chennai – 600 020, (Mobile No.9444088288), is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) 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.

iii) Learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

iv) In the event of non-appearance of the respondents herein, the petitioner herein shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondents herein.



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KRISHNAN RAMASAMY. J.,

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7.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 respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

20.04.2023

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Note: Issue Order Copy on 24.04.2023.

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