



Arb. O.P(Com.Div).No.123 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2024

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The Hon'ble Mr.Justice Krishnan Ramasamy

Arb.O.P (Com.Div.) No.123 of 2024

Diamler India Commercial Vehicles Pvt. Ltd.,
SIPCOT Industrial Growth Centre,
Oragadam, Mathur Post, Kundrathur Taluk,
Kancheepuram District – 602 105.

...Petitioner

Vs.

CM Smith and Sons Ltd.,
Dashrath Wadi, Court Road Nadiad,
District-Khera Nadiad,
Gujarat- 387 001.
Also having office at
Plot No.70/71, Dehgam Road,
Zak, Ahmedabad 382 330
Gujarat.

...Respondents

Arbitration Original Petition filed under Section 11 (5) of the Arbitration and Conciliation Act seeking to appoint an independent Sole Arbitrator in terms of clause 20.3 of DICV General Terms and Conditions, for the purpose of adjudicating upon the disputes that have arisen between the petitioner and the respondent and to award cost of the present proceeding.

For Petitioner : M/s.Mithrayi Kasthurirangan

For Respondent : No appearance

ORDER



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This Arbitration Original Petition has been filed under Section 11(5) of the Arbitration and Conciliation Act 1996 to appoint a Sole Arbitrator to adjudicate upon the disputes arisen between the petitioner and the respondent, in terms of clause 20.3 of DICV General Terms and Conditions.

2. The learned counsel appearing for the petitioner would submit that the petitioner is a Wholly owned subsidiary of Diamler Truck AG, engaged in the business of manufacture and sale of commercial vehicles and the respondent is one of the suppliers for vehicle related parts, such as brake, drums, etc.; that in relation to the supplies made by the respondent, various contracts were entered into between the petitioner and the respondent incorporating general terms and conditions of the Diamler India Commercial Vehicles Pvt. Ltd., as well as Diamler India Special Terms and Conditions; that the respondent in February, 2020, requested the petitioner for a recoverable advance for supply of parts amounts to Rs.2 crore citing Covid-19 difficulties, which request was acceded to by the petitioner and the petitioner transferred the said sum of Rs.2 crore to the respondent on 04.02.2020, however, when the petitioner sought for repayment of the same on 27.05.2020, the respondent has not come forward to repay the same, hence, the petitioner, as per the agreed terms of the contract, adjusted the amounts due and payable by the respondent,



but, an outstanding amount of Rs.95,10,219/69 was due to be paid by the respondent, and therefore, the petitioner sent several notices and called upon the respondent to pay the said outstanding amount followed by reminders; that despite the same, the respondent has not come forward to make the payment; hence, the petitioner has sent a legal notice on 01.06.2023 invoking arbitration proceedings, since the same evoked no response, the petitioner is before this Court by way of the present Petition seeking for appointment of an Arbitrator to adjudicate the dispute between them and the respondent in terms of clause 20.3 of DICV General Terms and Conditions. Thus, by averring so, the learned counsel prayed for allowing this Petition by appointing an Arbitrator.

3 Heard the learned counsel appearing for the petitioner. After filing of this petition, notice has been ordered to the respondent-Company and their name were also being printed in the causelist, however, when the Arbitration Original Petition is taken up for hearing today, none appeared on behalf of the respondent. Therefore, this Court proceeds to pass orders based on the submission made by the petitioner and materials available on records.



4. Thus, this Court upon hearing the learned counsel appearing for the petitioner and on perusal of the materials available, is of the view that the present dispute among the parties is arbitral in terms of 20.3 of General Terms and Conditions of Diamler India Commercial Vehicles Pvt. Ltd.General Terms and Conditions. In this context, it would be apposite to extract the relevant Clause of the DICV., which is extracted hereunder:-

“ Buyer and the supplier will endeavour to resolve my mutual negotiations any disputes, differences, controversies or claims arising out of or in connection with or relating to the purchase order or the breach, termination or invalidity hereof(dispute) which cannot be satisfactorily resolved by mutual negotiation wtihin 30 days of issue of a notice by a party shall be finally settled in accordance with the Indian Arbitraion and Concivilation Act, 1996. The Arbitration award shall be the final and binding on the parties. The arbitrator shall have th power to order specific performance of the agreement. The venue of the agreement shall be at Chennai, India and the language of Arbitration shall be in English.”

4.1 In view of the above clause, this Court is inclined to appoint an Arbitrator to adjudicate the disputes between the parties.



5. Accordingly, this Court feels it appropriate to issue the following direction:

i) Mr.P.Giridharan, having Chamber/Office at Vanguard House, 3rd Floor, No.48, Second Line Beach, Parrys, Chennai – 600 001, **Phone No: 9884672733**, is appointed as sole Arbitrator to enter upon reference and to adjudicate the *inter se* dispute between 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. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017.

iv) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent and vice versa.



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v) Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent herein to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the learned Arbitrator.

6. In the result, the Arbitration Original Petition is allowed on the aforesaid terms. No costs.

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Index : Yes/No



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Krishnan Ramasamy,J.,

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