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Arb.OP(Com.Div)No.155 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.OP(Com.Div)No.155 of 2024

M/s.Tractor Point
Represented by its Managing Partner,
Nakul Govind Raundal
Near Satana College, More Nagar,
Nashik Road, Satana,
Nashik, Maharastra 423 301. ...Petitioner

Vs.

M/s.Kubota Agricultural Machinery India Pvt. Ltd.,
Block No.94, Tower-1,
8th Floor, TVH Bellciaa Towers,
MRC Nagar, Chennai 600 028.Respondent

Prayer:- This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to (a) appoint a Sole Arbitrator to hear and decide the Arbitral dispute between the petitioner and the respondent, arising out of the Letter of Intent dated 01.03.2021 (b) direct the respondent to pay costs.

For Petitioner : Mr.Harshit S.Jain
for M/s.Rank Associates
For Respondent : Mr.P.Suresh



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ORDER

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This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the Act') to appoint a sole Arbitrator to resolve the Arbitral dispute between the petitioner and the respondent, arising out of the Letter of Intent dated 01.03.2021.

2. The learned counsel appearing for the petitioner would submit that, the present dispute has arisen out of Letter of Intent (in short 'LOI') dated 01.03.2021. The respondent-company is a manufacturer of Tractors and Engines. The petitioner was identified as a Dealer for the purpose of marketing and selling Tractors in the area of Satan Taluka of Nashik District. He would submit that, the LOI was issued for the purpose of dealership of Tractors, however, the dealership was terminated by the respondent vide letter dated 26.10.2023 contrary to the provisions of the agreed terms and conditions of LOI. Therefore, the petitioner made a request to the respondent to resolve the disputes between them, however the respondent has not come forward to resolve the dispute. Hence, the petitioner had issued a notice on 02.03.2024 under Section 21 of the Act,



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calling upon the respondent to give their consent for appointment of a sole Arbitrator. The respondent vide reply letter dated 12.03.2024 expressed their disagreement for appointment of the sole Arbitrator, which necessitated the petitioner-company in approaching this Court by way of filing the present Arbitration Original Petition seeking for the aforesaid prayer.

3. The learned counsel for the respondent by referring to the counter filed by the respondent strongly opposed for appointment of an Arbitrator. Further, he would submit that, in the event, if this Court is inclined to appoint an Arbitrator, he seeks leave of this Court to raise an issue with regard to arbitrability before the learned Arbitrator and the learned Arbitrator may decide the same.

4. Heard the submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.



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5. Upon hearing on both sides and on perusal of the materials available, this Court is of the prima facie view that the present dispute among the parties is arbitral, since in terms of clause 19 of the said LOI, the dispute between the parties are arbitral in nature. In this context, it would be apposite to refer to the relevant arbitration Clause 19 contained in LOI, which reads as under :

“19. Dispute Resolution:

The Company and the Proposed Dealer agree that they will first attempt to resolve any dispute regarding this LOI through mutual consultation. However, if such consultations do not result in amicable settlement of the dispute within 30 days after one party has given written notice to the other to commence such consultations, then either party may refer the dispute to arbitration. Any dispute, controversy or claim arising out of or relating to this LOI or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 as at present in force. The arbitration proceeding shall be conducted by a sole arbitrator to be appointed by mutual consent of both the parties. In case of disagreement between the parties in appointment of sole arbitrator, the same shall be appointed as per Arbitration and Conciliation Act, 1996 (as amended from time to time). The language of arbitration proceeding shall be English and the venue of arbitration shall be Chennai. The award of the arbitral tribunal shall be final



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and binding on the parties. Each party shall bear arbitration proceeding expenses at its own cost.”

6. In view of the above, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the parties. The parties are directed to raise all the issues before the learned Arbitrator including the issue with regard to arbitrability of the present dispute, and the learned Arbitrator shall decide the same and pass orders on merits and in accordance with law.

7. Accordingly, this Court feels it appropriate to issue the following directions:-

- (a) **Mr.M.Ilangovan, Former District Judge**, Possessing Mobile Nos. 8111022221 & 7010319425, Residing at No.10, W-Block, 5th Main Road, Anna Nagar, Chennai 600 040, is appointed as a Sole Arbitrator to enter upon reference and adjudicate the disputes between the parties, arising out of the above said LOI.
- (b) The Arbitrator shall initiate arbitration proceedings and after issuing notice to the parties concerned and upon hearing them, pass an award, on merits and in accordance with law and uninfluenced by any of the observations made in this



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order, within a period of six months from the date of receipt of a copy of this order.

- (c) The Arbitrator shall be paid fees and other incidental charges, as per the Schedule IV of the Act and the same shall be borne by both 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 is at liberty to recover the same directly from the Respondent.
- (d) The Arbitrator shall decide the arbitrability of the dispute in the present case.

8. In the result, the Arbitration Original petition is allowed with the aforesaid directions. No costs.

25.07.2024

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Neutral Citation:Yes/No

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Note: Issue order copy on 08.08.2024.



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KRISHNAN RAMASAMY.J

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