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Arb.OP(Com.Div)No.220 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.OP(Com.Div)No.220 of 2024

Eicher Motors Limited
(Unit Royal Enfield)
Having its registered office at
3rd Floor, Select Citywalk,
A-3 District Centre, Saket,
New Delhi 110 017.

And also at
296, Rajiv Gandhi Salai,
Sholinganallur,
Chennai 600 119.

Represented by its Constituted Attorney
Mr.Panchajanya Borthakur

...Petitioner

Vs.

1. Mrs.Kala Thiagarajan
2. Mrs.Vinutha Mohan
3. Mr.Subramaniam Mohan
4. Mrs.Yamani Chandramouli
5. Mr.T.Chandra Mouli

....Respondents

Prayer:- This Arbitration Original Petition has been filed under Section 11(4 & 6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to adjudicate over the dispute arising out of the Memorandum of Compromise dated 05.01.2024 between the petitioner and respondents.



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For Petitioner : Mr.Vijay Narayan
Senior Counsel for Mr.Arun C.Mohan
For Respondents : Mr.K.Pradeep

ORDER

This Arbitration Original Petition has been filed under Section 11(4 & 6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the Act') to appoint a sole Arbitrator to adjudicate over the dispute arising out of the Memorandum of Compromise dated 05.01.2024 between the petitioner and respondents.

2. The learned senior counsel appearing for the petitioner would submit that, the present dispute has arisen out of Memorandum of Compromise (in short 'MOC') dated 05.01.2024. It is stated that the 5th respondent being the Power of Attorney holder for respondents 1 to 4 entered into MoC with the petitioner. The respondents' property was leased out to the petitioner by virtue of the aforesaid MOC and as per the above said MOC, the respondents have agreed to pay a sum of Rs.24,00,000/- to the petitioner by way of Demand Draft (DD) or by way of a cheque in favour of the petitioner. As per the agreed terms, the respondent drawn a



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cheque for the said sum of Rs.24,00,000/- however, to the utter shock and dismay, when the petitioner presented the cheque for encashment, the same got bounced. Therefore, the petitioner contended that the act of the fifth respondent is in blatant violation of the terms of the MOC and thereby, committed breach of MOC and since in the said MOC, there is a referral clause for arbitration, the petitioner issued notice under Section 21 of the Act, dated 08.03.2024, however, the respondents are yet to revert to the said notice, which necessitated the petitioner to approach this Court by way of filing the present Arbitration Original Petition seeking for the aforesaid prayer.

3. The learned counsel for the respondents would submit that initially, there was no arbitration clause and in terms of MOC, a cheque for a sum of Rs.24,00,000/- was issued in favour of the petitioner, since the same was dis-honoured, it does not mean that the amount is not available in that account, since the property vests with the petitioner, virtually, the respondents has given an instruction not to honour the cheque. Further, the respondents was intended to deduct some more money, that is the reason why, the respondents has given such instructions not to honour the cheque.



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Further, he would submit that they also facing Section 138 proceedings.

Therefore, the present dispute cannot be arbitrable, in the event, if any Arbitrator is appointed, then Schedule IV fees can be made, in which case, he would submit that he may be permitted to make a counter claim with regard to litigation expenses incurred due to the cause of the claim.

4. Heard the submission made by the learned senior counsel for the petitioner as well as the learned counsel for the respondents and perused the materials available on record.

5. The petitioner seeing no end to these frivolous claims being raised by the fifth respondent, on behalf of all the respondents, decided to enter into negotiations with the respondents to resolve the issue pertaining to the property, and the fifth respondent, being the Power of Attorney Holder for respondents 1 to 4, entered into MOC dated 05.01.2024 with the petitioner. As per the agreed terms, the respondents drawn a cheque for the said sum of Rs.24,00,000/- however, when the petitioner presented the cheque for encashment, the same got bounced. Hence, the petitioner initiated Section 138 of N.I. proceedings against the respondents with



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regard to dishonour of cheque. However, the respondents breached the terms of MOC and since in the said MOC, there is a referral clause for arbitration, the petitioner issued notice under Section 21 of the Act, dated 08.03.2024, but the same evoked no response. Hence, the petitioner is before this Court seeking for referring the dispute before the Arbitrator.

6. 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, since in terms of clause 9 of the said MOC, the dispute between the parties are arbitral in nature. In this context, it would be apposite to refer to the relevant arbitration Clause 9 contained in MoC, which is extracted as under :

“9. Any dispute between the parties under this Memorandum that cannot be settled amicably may be referred by either party to arbitration. The venue of arbitration shall be at Chennai. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof. The Arbitral Tribunal shall consist of a sole arbitrator and the arbitration proceedings shall be conducted in English language.”



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

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

- (a) **The Hon'ble Mr.Justice T.Ravindran**, Former Judge, Madras High Court, residing at New No.27, Old No.12, 3rd Avenue, Indira Nagar, Adyar, Chennai – 600 020, possessing Mobile Nos.**9941350926** and **9444399700**, is appointed as a Sole Arbitrator to enter upon reference and adjudicate the disputes between the parties, arising out of the above said MoC.
- (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 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 Respondents, the Petitioner shall bear the entire remuneration and other expenses and thereafter,



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the Petitioner is at liberty to recover the same directly from the Respondents.

(d) The parties are at liberty to raise all the issues with regard to counter claim before the learned Arbitrator including the maintainability of the jurisdiction of the Arbitrator.

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

11.07.2024

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Neutral Citation:Yes/No

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Note: Issue order copy on 28.07.2024.



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KRISHNAN RAMASAMY.J

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