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Arb.O.P.(Com.Div.) No.405 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.405 of 2023

Same Deutz Fahr India Private Limited,
Represented by P.Ramesh

... Petitioner

Vs.

1.M/s.Shree Balaji Tractors,
Partnership Firm

2.Rajgonda Balgonda Patil,
Partner M/s.Shree Balaji Tractors

3.Rajgonda Aannaso Patil
Partner M/s.Shree Balaji Tractors

... Respondents

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, as amended up to date, praying for appointment of a Sole Arbitrator to adjudicate the dispute between the petitioner and the respondents and to direct the respondents to pay the cost of the petition.

For Petitioner : Ms.Prupti Mehta

For Respondents : Mr.R.Palaniandavan



ORDER

WEB COPY This Original Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, as amended up to date, for appointment of a Sole Arbitrator.

2. The dispute between the petitioner and the respondents *prima facie* appears to be arbitrable in terms of the Dealership Agreement dated 03.01.2018. Although objection is raised by the learned counsel for the respondents that the terms of the Agreement was only for a period of one year and had expired on 31.12.2018 and thereafter, there was no renewal as per Clause 2 of the aforesaid Dealership Agreement dated 03.01.2018.

3. The learned counsel for the respondents however confirms that the respondents were sourcing spare parts from the petitioner after the period of one year though the Dealership Agreement dated 03.01.2018 was not renewed.

4. If the respondents were sourcing spare parts from the petitioner after 31.12.2018, it has to be *prima facie* construed that the arrangements under the Dealership Agreement stood renewed between the parties in terms of Clause 2.2 of the Dealership Agreement dated 03.01.2018.



5. The petitioner has also invoked Clause 14J of the Dealership Agreement dated 03.01.2018 which contemplates a mechanism for resolving the dispute first through negotiation and thereafter through arbitration.

Relevant Clause reads as under:-

"14. Miscellaneous :

J. Dispute Resolution

Any and all disputes, which may arise under, out of, in connection with, or in relation to this Agreement, including those as to the application and/or interpretation of this Agreement, or the legal relations and/or mutual rights, performance and obligations of the parties hereunder, shall be resolved through negotiations by the authorised officers or representatives of the Company and the Dealer before seeking outside resolution of the dispute. Those disputes not resolved by negotiations, within thirty (30) days from the date of notification of the disputes, shall be resolved through arbitration by a sole arbitrator to be appointed by the Director of the Company, who may be authorized by the Board of Directors of the Company in this regard. The arbitration proceedings shall be held at Chennai in accordance with the provisions of the Arbitration & Conciliation Act, 1996 as in force in India or any statutory modifications or reenactments thereof. The courts at Ranipet/Vellore alone shall have exclusive jurisdiction in all matters arising out of this Agreement."

6. The petitioner has also issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996, which incidentally calls upon the respondents to come for negotiation in terms of Clause 14J of the Dealership Agreement dated 03.01.2018.



WEB COPY 7. The respondents have responded/replied through a counsel dated 14.07.2023 by merely stating that the dispute was not arbitrable.

8. The other objection of the learned counsel for the respondents appears to be that the Dealership Agreement is not signed in all pages by the petitioner and the signature of the petitioner is only in the last page. There is no dispute that there was a Dealership Agreement between the parties and that there is an arbitrable clause between the parties. In the facts of the case, the respondents have thus forfeited their rights to object with the appointment of the Arbitrator.

9. The question of the petitioner nominating an Arbitrator in terms of Clause 14J of the Dealership Agreement dated 03.01.2018 cannot be countenanced.

10. Considering the nature of dispute, Court is of the view, an independent Arbitrator can be appointed as prayed for.

11. Thus, **Mr.Harishankar Mani, Advocate, Enrollment No.1092/1994, Mobile No.9841093321, having Office at New No.115, First Floor, Luz**



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Church Road, Mylapore, Chennai - 600 004, is appointed as an Arbitrator to

enter upon reference to resolve the *inter se* dispute between the parties.

12. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

13. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.



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C.SARAVANAN, J.

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14. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

15. Since this Court has appointed the Arbitrator, it is open to the petitioners as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

11.01.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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