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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.632 OF 2009

Aidek Tourism Services Private Limited A Private Limited Company incorporated under the Companies Act, 1956 having its registered office at 12, Kalindas Udyog Bhavan, Century Bazar Lane, Prabhadevi, Mumbai – 400 025.	))))))	...Petitioner

….Versus....

Aditya Birla Nuvo Limited, A Public Limited Company incorporated under the Companies Act, 1956 having its registered office at Apeejay, 2nd Floor, Shahid Bhagat Singh Road, Fort, Mumbai – 400 001	))))))	...Respondent

Mr.Mangal Bhandari i/b Ms.Pranjali Bhandari for the Petitioner.

Mr.J.P. Sen, Senior Counsel with Mr.Cyrus Bharucha, Ms.Bhavna Singh, Ms.D.J. Kakalia, Mr.H.E. Desai and Mr.Paresh Patkar i/b Mulla & Mulla & C. B. & Co. for the Respondent.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 27TH JULY, 2016
PRONOUNCED ON : 24TH AUGUST, 2016

JUDGMENT :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short "the Arbitration Act"), the petitioner has impugned the arbitral award dated 23rd March, 2009 as modified

by an order dated 22nd May, 2009 and the impugned additional award dated 30th November, 2013 as corrected by an order dated 9th January, 2014. Some of the relevant facts for the purpose of deciding this arbitration petition are as under :

2. It was the case of the respondent that the petitioner approached the respondent for taking 4 Tata Estate Cars on hire purchase basis. The parties entered into a Hire Purchase Agreement on 29th August, 1994 in respect of the 4 cars bearing Nos.MH-01 - G – 6625, MH-01 - G – 6623, MH-01 - G – 6620 and MH-01 - G – 6621. The total agreement value was Rs.23,89,752/-, including interest which was to be paid in monthly installments of Rs.66,382/- over a period of 36 months from 25th August, 1994 to 25th July, 1997. It was the case of the respondent that the petitioner committed default in making payment of the installments under the said Hire Purchase Agreement dated 29th August, 1994. The respondent accordingly took possession of the car bearing registration No.MH-01 G – 6620 in New Delhi on 23rd May, 2000. The petitioner filed criminal complaint against the respondent with various police authorities in respect of repossession of the vehicle by the respondent. The petitioner raised debit notes on the respondent on account of hire charges alleged to be due and payable on repossession of the vehicle.

3. It is the case of the respondent that on 11th November,

1997, the respondent forwarded the Hire Purchase Agreements to the petitioner, including a copy of the agreement which was in respect of Hire Purchase Agreement No.95074 dated 29th August, 1994 in respect of 4 Tata Estate Cars. It is the case of the respondent that on 11th May, 1999, the petitioner addressed a letter to the respondent and admitted having taken money from the respondent and requested for re-schedulement of the amounts due.

4. On 28th July, 2000, the respondent vide its advocate's letter terminated the said Hire Purchase Agreement dated 29th August, 1994. On 19th March, 2000, the respondent advertised for sale of the repossessed vehicle to which the petitioner objected vide advocate's letter dated 27th September, 2000. The respondent sold car bearing No.MH-01 G – 6620 for Rs.37,333/-.

5. The dispute arose between the parties. The respondent invoked the arbitration agreement and approached Indian Merchants' Chamber under the provisions of the arbitration agreement.

6. The Indian Merchants' Chamber by its letter dated 13th July, 2001 sought the consent of the petitioner to appoint an arbitrator. The petitioner vide its advocate's letter dated 24th August, 2001, raised its objection to the jurisdiction of the learned arbitrator to try and entertain the claim and consent to the appointment of the retired Chief Justice of India as a sole arbitrator without prejudice to

the rights and contentions of the petitioner.

7. The parties had four other transactions which were the subject matter of other four references made by the respondent. All five references were heard together by the learned arbitrator appointed by the Indian Merchants' Chamber. It was agreed between the parties that the evidence in five matters would be led in common and hence the entire documentary and oral evidence would be relied upon in all five matters.

8. The Indian Merchants' Chamber addressed a letter dated 24th September, 2001 to the solicitors representing the respondent calling upon them to forward either the original or photocopy of the arbitration agreement.

9. Pursuant to the liberty granted by the learned arbitrator, the respondent filed the statement of claim on 4th July, 2001 and claimed an amount of Rs.23,89,752/-, including interest. In the said statement of claim, the respondent annexed the typed copy of an agreement of Hire Purchase Agreement dated 29th August, 1994. The petitioner herein filed the written statement in the said proceedings. The petitioner herein filed the amended written statement on 5th April, 2003 after taking inspection of the original documents given by the respondent on 1st February, 2002. On 30th May, 2003, the Indian Merchants' Chamber conveyed the order

passed by the learned arbitrator that a liberty was granted to the respondent to file supplementary pleadings to the said amendment within two weeks. The respondent, however did not file any reply to the amended written statement. It is the case of the petitioner that in the said amended written statement filed by the petitioner herein, it was specifically pleaded by the petitioner that the Hire Purchase Agreement was forged and fabricated.

10. On 10th June, 2003, the learned arbitrator framed issues, which included the issue “whether the claimants proved the agreement dated 29th August, 1994” and “whether the transaction between the claimants and the respondent was Hire Purchase Agreement or a finance agreement”.

11. On 28th September, 2004, the learned arbitrator had observed that it appeared to him that it was serious doubt as to whether the documents Exhibits “X-1” to “X-5” were duly stamped. The learned arbitrator accordingly directed the Indian Merchants' Chamber to send those five agreements to the Superintendent of Stamps having its office at Old Custom House, Fort, Mumbai for adjudication of correct stamp duty and directed that the hearing would be taken after the same was received from the Superintendent of Stamps. Insofar as this matter is concerned, the document which was marked as Exhibit 'X-1” is the subject matter of the present arbitration

petition.

12. Some time in the month of March, 2007, a former Judge of this Court is appointed as a sole arbitrator in place of the erstwhile arbitrator, who had resigned.

13. In a meeting held on 29th November, 2007, the respondent through its learned senior counsel tendered five agreements in evidence on behalf of the respondent herein which were marked as "X– 1 to X- 5" for identification due to inadequate stamp duty. The learned arbitrator in the said meeting recorded that since the issue of inadequate stamp duty on such five agreements have been resolved and adequate stamp duty was paid, the photo copies of the said five agreements were taken on record in the arbitral reference and the question of admitting them in evidence shall be considered later on. In the said meeting, the learned arbitrator refused to take in evidence a copy of the criminal proceedings sought to be tendered by the petitioner through its counsel.

14. Before the learned arbitrator, both the parties examined their witnesses, who was extensively cross-examined by opposite party. Both the parties filed written submissions before the learned arbitrator.

15. On 23rd March, 2009, the learned arbitrator made an award directing the petitioner to pay a sum of Rs.19,20,292/- with

interest on the principal sum of Rs.6,91,598/- at the rate of 12% p.a. from 5th April, 2001 till payment.

16. Being aggrieved by the said award dated 23rd March, 2009, the petitioner herein filed this arbitration petition under section 34 of the Arbitration Act.

17. During the pendency of these arbitration proceedings, the petitioner filed chamber summons in this petition *inter-alia* praying for an amendment of the arbitration petition. By an order dated 3rd December, 2012, this Court allowed the said chamber summons and granted liberty to the petitioner to amend the arbitration petition by adding paragraphs 6-A to 6-L and paragraphs 13 (yy-A) to 13 (yy-K).

18. By an order dated 18th April, 2013 as corrected by an order dated 12th June, 2013, this Court remanded the matter under section 34(4) of the Arbitration Act and directed the learned arbitrator to consider the averments made by the petitioner by virtue of amendments permitted by this Court in the arbitration petition. This Court granted a liberty to both the parties to lead oral evidence by way of affidavits. The respondent filed affidavit dated 31st August, 2013 of an ex-employee Mr.Krishna Gopal Ajmera in lieu of examination in chief. The petitioner filed affidavit in lieu of examination in chief dated 10th September, 2013 of its Director Mr.Vishal Kedia. Both these witnesses were extensively cross-

examined. The learned arbitrator framed additional issues and heard both the parties. On 30th November, 2013, the learned arbitrator made an additional award and rejected the contentions raised by the petitioner. On 9th January, 2014, the learned arbitrator passed further orders on the application dated 27th December, 2013 filed by the respondent under section 33 of the Arbitration Act. The petitioner thereafter impugned the additional award dated 30th November, 2013 as corrected by the order dated 9th January, 2014 by carrying out amendment in this arbitration petition.

19. Mr.Bhandari, learned counsel appearing for the petitioner reiterated some of the submissions which were already advanced before this Court, which were common in Arbitration Petition Nos.629 of 2009 and 630 of 2009 and made additional submissions which are summarized herein which were not raised in the said two Arbitration Petition Nos.629 of 2009 and 630 of 2009.

20. It is submitted by the learned counsel for the petitioner that the transaction which was subject matter of this arbitration petition was in respect of four cars. My attention is invited to the Hire Purchase Agreement dated 29th August, 1994. He submits that the stamp papers in respect of the said Hire Purchase Agreements were dated 25th August, 1994, which were of Rs.8,000/-. He submits that there was no stamp paper affixed to the agreement by the

respondent insofar as the agreement which was the subject matter of the Arbitration Petition No.631 of 2009. He submits that the petitioner has not disputed the signature of the Director of the petitioner on behalf of the petitioner on the said Hire Purchase Agreement. He submits that the signatures were however, taken by the respondent on the blank papers.

21. It is submitted by the learned counsel that the Hire Purchase Agreement dated 29th August, 1994 between Birla Global Finance Limited and the petitioner, which was marked Exhibit "X-1" was fabricated, void and unacceptable in law. He submits that the Hire Purchase Agreement was on a stamp paper for which there was an endorsement of paid date as 30th August, 1994, whereas the document was dated 29th August, 1994. He submits that the said document dated 29th August, 1994 was thus anti-dated and was accordingly bad in law and unacceptable. He submits that the invoices for the cars is dated 31st August, 1994. It is submitted that in the typed copy of the Hire Purchase Agreement annexed to the statement of claim, there were several discrepancies including the name of hirer which was shown as M/s.Ramniranjan Kedia Tourism Services Private Limited, whereas the document was in the name of M/s.Ramniranjan Kedia only. He submits that M/s.Ramniranjan Kedia Tourism Services Private Limited came to an existence only on 17th

November, 1994.

22. Learned counsel for the petitioner invited my attention to some of the portion of the oral evidence led by Mr.Pawan Gupta, who was examined as one of the witness by the respondent and would submit that the said witness who gave evidence in respect of the Hire Purchase Agreement was totally unreliable. The learned arbitrator however, has ignored various discrepancies and mistakes admitted by the said witness while dealing with the said evidence in the impugned award.

23. It is submitted by the learned counsel for the petitioner that in view of various discrepancies admitted by the said witness examined by the respondent, the learned arbitrator could not have taken on record the photocopies of the agreements and without the respondent producing original thereof, could not have marked the photocopies as exhibits.

24. It is submitted by the learned counsel for the petitioner that the original transaction was a transaction of loan of Rs.18,46,500/- as mentioned in the Hire Purchase Agreement with equated monthly installments. Due to subsequent event of refund of excise duty, the entire transaction was changed including the loan amount, equated monthly installments which resulted in novatio. No fresh agreement was executed between the parties, though there were changes in the

loan amount and equated monthly installment amounts. He submits that the learned arbitrator thus could not have made the award based on the earlier documents which were in respect of the original transactions, which were substantially changed and though no amendment to those documents was admittedly carried out.

25. It is submitted by the learned counsel for the petitioner that though the document dated 29th August, 1994 was labelled as Hire Purchase Agreement, the said document was a loan agreement. He submits that the transaction had started on 25th August, 1994 as equated monthly cheques were taken with respect to that date which was prior to the date of invoice dated 31st August, 1994 for the purchase of cars. He submits that under the hire purchase transaction the hirer has to become the owner of the property first and then only he can give on hire, whereas in the loan transaction, the person who has given finance, starts the transaction from the date of giving finance.

26. It is submitted that even if it is held that the agreement entered into between the parties was proved, in fact it was a finance agreement and title in the cars vests with the petitioner. The respondent therefore, could not repossess the said cars and its prayer for handing over delivery of the cars was not maintainable. In support of this submission, the leaned counsel for the petitioner

placed reliance on various clauses of the said Hire Purchase Agreement. It is submitted that the respondent has not claimed depreciation on the cars and hire charges which were received by the respondent were not entirely treated as income by them in their books of account. He submits that it was thus clear beyond reasonable doubt that the transaction between the parties was a loan transaction and not hire purchase transaction.

27. The next submission of the learned counsel for the petitioner is that the claim made by the respondent was barred by law of limitation. He submits that the respondent had made a claim before the learned arbitrator for unpaid monthly installments payable under the said Hire Purchase Agreement. He submits that each monthly installment payment was a separate cause of action. It is submitted that the payment date in respect of the last monthly installment was 25th July, 1997 as claimed in the statement of claim. He submits that the last date for making the claim by the respondent was 25th July, 2000. The statement of claim is affirmed on 4th July, 2001 and was filed with the Indian Merchants' Chamber on 11th June, 2001 and thus barred by law of limitation. He submits that the only averment made in the statement of claim on the point of limitation is that the present claim filed by the respondent was within time. The respondent has not pleaded as to how the period of limitation was extended from the

letter dated 11th May, 1999 addressed by the petitioner herein to the respondent allegedly admitting the liability and thereby extending the period of limitation under section 18 of the Limitation Act, 1963. He submits that the petitioner had specifically raised bar of limitation in paragraphs 4 and 53 of the written statement filed by the petitioner.

28. It is submitted by the learned counsel for the petitioner that the respondent had not produced the letter dated 11th May, 1999 addressed by the respondent to the petitioner, that it had neither made averment in respect thereof nor produced the said letter even when the said witness Mr.Pawan Gupta was examined by the respondent, who has filed the affidavit of evidence on 13th March, 2003. The cross-examination of Mr.Pawan Gupta was commenced on 10th June, 2003. He submits that the said letter dated 11th May, 1999 was sought to be tendered for the first time on 11th June, 2003 when the same was objected to by the petitioner on the ground of the letter being a “without prejudice” letter. The learned arbitrator issued a direction that admissibility of the said document shall be decided later on.

29. It is submitted by the learned counsel for the petitioner that the said letter dated 11th May, 1999 was shown to the witness Mr.Vishal Kedia, who was examined by the petitioner. He submits that the learned arbitrator could not have taken the said document

dated 11th May, 1999 on record in evidence, as no opportunity was made available to the petitioner to know whether the said document was admitted in evidence before the arguments or at any other stage.

30. It is submitted by the learned counsel for the petitioner that the provisions of the Limitation Act are applicable to the arbitration proceedings. The principles laid down under Order 7 Rule 6 was applicable to the arbitration proceedings. He submits that since there was no pleading by the respondent for seeking extension of the period of limitation based on the said letter dated 11th May, 1999, the learned arbitrator could not have allowed the respondent to lead any evidence on the said document. He submits that the averment made in the statement of claim that the claims were not barred by law of limitation was totally vague and was a bald statement.

31. It is submitted by the learned counsel for the petitioner that in any event the said letter dated 11th May, 1999 was to be treated as "without prejudice" to the rights and contentions of the petitioner as the same was addressed by the petitioner in continuation of the earlier letters which were marked as "without prejudice" and thus the learned arbitrator ought to have marked and exhibited the whole chain of correspondence and not only one document. In support of this submission the learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in

case of ***Church of Christ Charitable Trust & Educational Charitable Society vs. M/s.Ponniamman Educational Trust (2012) 8 SCC 706.***

32. Mr.Bhandari, learned counsel for the petitioner submitted a chart showing comparison of contents of various paragraphs of the written arguments filed by the respondent with various portions of the impugned award in support of his submission that the learned arbitrator had virtually adopted the written submissions filed by the respondent in verbatim as part of his reasons in the impugned award and would submit that the award shows non-application of mind and would indicate bias on the part of the learned arbitrator.

33. Mr.Sen, learned senior counsel appearing for the respondent submits that the respondent reiterated the submissions already made by the respondent in Arbitration Petition Nos.629 of 2009 and 630 of 2009 in support of the issues which are reiterated by the petitioner in this arbitration petition. In addition to the said submissions already made by the respondent in the aforesaid two arbitration petitions, the learned senior counsel for the respondent invited my attention to a letter dated 14th August, 1994 of the petitioner authorizing Mr.Ramniranjan Kedia, who was then partner of that partnership firm to obtain cars on hire purchase basis from the respondent. He also placed reliance on the sanctioned letter dated

24th August, 1994 bearing acknowledgement of the petitioner which reflected various terms on which the vehicles were to be given on hire purchase. Learned senior counsel for the respondent invited my attention to the various clauses of Hire Purchase Agreement dated 29th August, 1994. He submits that on 29th August, 1994, the petitioner had annexed pay orders / cheques dated 25th August, 1994 for Rs.1,32,764/- towards two advance equated monthly installments m Rs.18,465/- towards documentation charges and Rs.8000/- towards stamp duty and Rs.332/- towards down payment, aggregating to Rs.1,59,561/-. He submits that by their undated letter forwarded 34 post dated cheques of Rs.66,382/- each.

34. It is submitted by the learned senior counsel for the respondent that on 30th August, 1994, the respondent herein had forwarded a cheque for Rs.18,46,832/- in favour of United Motors (I) Limited in respect of four Tata Estate Cars, the said amount was debited to the account of the respondent on 2nd September, 1994 by the State Bank of India. He submits that the United Motors (I) Limited had thereafter issued invoices on 31st August, 1994 which indicated that the cars were sold to the respondent. On 31st August, 1994, the said United Motors (I) Limited also issued receipt for Rs.18,46,832/- in favour of the respondent in respect of the said four Tata Estate Cars. The insurance policies in respect of the said four cars were

issued by the National Insurance Company Limited in favour of the respondent.

35. Insofar as the submission of the learned counsel for the petitioner that the learned arbitrator could not have considered the documents containing terms and conditions of the transaction which were subsequently modified and/or changed due to reduction of duty or refund of rebate is concerned, it is submitted by the learned senior counsel for the respondent that initially equated monthly installments of Rs.66,382/- which were paid by the petitioner was notionally divided for accounting purpose into the amounts of Rs.16,596/- each for each of 4 Tata Estate Cars. He submits that equated monthly installment was subsequently reduced in view of the refund of excise duty and thus amount of Rs.61,902/- was divided for accounting purpose into Rs.15,476/- for each of those 4 Tata Estate Cars. He submits that the amounts of the petitioner in the books of the respondent showed reduced finance amount of Rs.17,21,868/- and not the original amount of Rs.18,46,800/-. He submits that merely because there was no formal amendment in the original agreement, fact remains that both the parties had given effect to the factum of refund of excise rebate in the books of account. He submits that the learned arbitrator has not allowed the claim on the basis of the amounts mentioned in the Hire Purchase Agreement or equated

monthly installments mentioned therein initially but has allowed the claims based on the reduced amount and thus no grievance can be made by the petitioner against that part of the award.

36. Learned senior counsel for the respondent invited my attention to various financial documents including the balance sheets of the petitioner for several years and would submit that in all such documents, the petitioner itself had reflected the transaction between the petitioner and the respondent as hire purchase transaction. He submits that even in the gross block fixed assets shown in the balance sheets of the petitioner, it was clearly reflected that tourist cars were obtained by the petitioner from the respondent on hire purchase basis. The amounts reflected in the finance, documents on record also indicated payment of interest / finance charges on hire purchase increased by the petitioner.

37. It is submitted by the learned senior counsel for the respondent that merely because the cars were purchased by the respondent after the date of Hire Purchase Agreement would not make Hire Purchase Agreement a loan transaction. The invoices were admittedly issued in the name of the respondent in respect of those four cars which were given on hire purchase to the petitioner. The respondent had forwarded the cheque dated 30th August, 1994 to the United Motors (I) Limited towards four Tata Estate Cars. The said

United Motors (I) Limited had issued a receipt on 31st August, 1994 in favour of the respondent in respect of the said 4 Tata Estate Cars. He submits that there is thus no substance in the submission of the learned counsel for the petitioner that the transaction entered into between the parties was not Hire Purchase Agreement but was a loan agreement.

38. It is submitted by the learned senior counsel for the respondent that if the petitioner did not possess copy of the agreement entered into between the parties prior to 11th May, 1999, the petitioner could not have referred to all the details of the transactions entered into between the parties, the amount taken, equated monthly installments to be paid etc. He submits that in the said letter dated 11th May, 1999, the petitioner had admitted its liability and had requested the respondent to reschedule equated monthly installments. He submits that the learned arbitrator has rightly interpreted the said letter along with other documents marked in evidence and has rightly rendered a finding that there was acknowledgement of liability by the petitioner in the said letter. He submits that the finding of the learned arbitrator that jural relationship existed between the parties being not perverse, this Court cannot interfere with such findings of fact in this petition. He submits that the learned arbitrator has rightly held that the letter dated 11th May, 1999

was not addressed by the petitioner without prejudice to its rights and contentions. He submits that in any event this Court has already rejected this submission in the judgment delivered in Arbitration Petition No.629 of 2009, which judgment applies to the facts of this case and is binding on this Court.

39. Insofar as the submission of the learned counsel for the petitioner that there was no pleading in the statement of claim that the period of limitation was extended in view of the alleged admission of liability in the letter dated 11th May,1999 is concerned, it is submitted that strict rules of pleadings set out in the Code of Civil Procedure, 1908 do not apply to the arbitration proceedings. He submits that it was not the case of the petitioner that the said letter dated 11th May,1999 was not sent by the petitioner or that the contents of the said letter were incorrect. The learned arbitrator thus rightly marked the said document in evidence. The contents of the said document were proved in the arbitration proceedings. The petitioner thus could not make any averment contrary to the contents of the said document. He submits that the said document was admittedly shown to the witness examined by both the parties but no dispute was raised by the petitioner that the same was not addressed by the petitioner. The learned arbitrator accordingly rightly considered the said document while rendering a finding on the issue of limitation raised

by the petitioner.

40. Learned senior counsel for the respondent reiterated his submission made on the basis of various paragraphs of the cross-examination of Mr.Vishal Kedia, who was examined as a witness of the petitioner while dealing with the submissions of the petitioner in Arbitration Petition Nos.629 of 2009 and 630 of 2009. He submits that the said witness had admitted in the cross-examination that the petitioner had rightly understood the contents of the Hire Purchase Agreement and the real transaction between the parties as reflected in the said Hire Purchase Agreement.

41. Learned senior counsel for the respondent also reiterated the submissions made by the learned senior counsel insofar as the allegations of the petitioner about similarity of the contents of some of the paragraphs of the written submissions filed by the respondent with some of the paragraphs of the impugned award and would submit that since the learned arbitrator had accepted the case of the respondent and having found that the submissions made by the petitioner are frivolous and untenable, the learned arbitrator accepted the submissions advanced by the petitioner. It is submitted that the allegations made by the petitioner against the learned arbitrator are thus totally false and incorrect.

42. Insofar as the submission of the learned counsel for the

petitioner that though the petitioner did not dispute the signature of the petitioner on the Hire Purchase Agreement, the signatures were however, taken on the blank documents is concerned, it is submitted by the learned senior counsel for the respondent that the learned senior counsel reiterated the submissions made by him in Arbitration Petition Nos.629 of 2009 and 630 of 2009 and placed reliance on the judgment of this Court delivered on 8th April, 2015 in Arbitration Petition No.629 of 2009 between the same parties and the judgment of the Supreme Court in case of ***Sardar Trilok Singh & Ors. vs. Satya Deo Tripathi, (1979) 4 SCC 396.*** It is submitted that even if the signatures of a party are obtained on blank sheet of papers, that by itself would not amount to an offence of forgery or like. It becomes an offence when the paper is fabricated into a document of the kind which attracts relevant provisions of the Indian Penal Code making it an offence or that such document is used as a genuine document. He also placed reliance on the judgment of the Supreme Court in case of ***Indian Bank vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550*** in support of the said submission.

43. Mr.Bhandari, learned counsel for the petitioner in rejoinder submits that in the accounts of the petitioner, the petitioner has showed the transaction between the parties as a loan and not hire purchase. The respondent has shown in its books of account the

payment as interest and not as hire charges.

<u>REASONS AND CONCLUSIONS :</u>-

44. Mr.Bhandari, learned counsel appearing for the petitioner submits that the submissions already made by the petitioner in Arbitration Petition Nos.629 of 2009 and 630 of 2009 are adopted by the petitioner as part of the submissions in this petition also. Learned counsel for the petitioner also made few additional submissions for consideration of this Court which were responded by the learned senior counsel for the respondent. The additional submissions made by both the parties are considered by this Court in the later part of the judgment.

45. Insofar as the submission of the learned counsel for the petitioner that on one hand there was no stamp paper affixed to the agreement by the respondent which was the subject matter of Arbitration Petition No.631 of 2009 and on the other hand in case of hire purchase agreement dated 25th August, 1994, which was the subject matter of this arbitration petition is concerned, stamp paper of Rs.8,000/- were affixed is concerned, in my view, there is no substance in this submission of the learned counsel for the petitioner. Neither any such objection was raised by the petitioner before the learned arbitrator nor there is any merit in this submission of the learned counsel. It is not the case of the petitioner that the said hire

purchase agreement was insufficiently stamped even after adjudication of the document by the authority.

46. Insofar as the submission of the learned counsel for the petitioner that there were various discrepancies in the hire purchase agreement about the date, about the name of the hirer which was shown as M/s.Ramniranjan Kedia Tourism Services Private Limited, whereas the document was in the name of M/s.Ramniranjan Kedia is concerned, even these objections were not raised by the petitioner before the learned arbitrator nor such alleged discrepancies were confronted with to the witness examined by the respondent. In my view, even otherwise such alleged discrepancy would not invalid the transaction in view of the admitted fact that the said hire purchase agreement was entered into between the parties, though the contention of the petitioner was about the nature of transaction. The petitioner had not disputed its signatures on the said hire purchase agreement, but had only contended that the signatures were taken on blank papers. The petitioner has not disputed that the printed provisions on the said document were existing when the same was signed by the petitioner and which described the document as Hire Purchase Agreement.

47. Insofar as the submission of the learned counsel for the petitioner that due to the subsequent event i.e. refund of excise duty,

loan amount as well as the amount of equated monthly installments were changed and reduced and thus without any amendment to the agreement, the respondent could not have made the claim based on the earlier agreement is concerned, there is no dispute that in view of the refund of excise rebate, the amount of installments as well as hire purchase amount was reduced. It is also not in dispute that the petitioner had paid some of the installments towards hire charges based on the reduced amount. It is not the case of the petitioner that the learned arbitrator has allowed the claim for larger amount inspite of excise rebate. In my view, there is thus no substance in this submission of the learned counsel for the petitioner.

48. Insofar as the submission of the learned counsel for the petitioner that the date of invoices in respect of the cars were of the subsequent dates and thus the transaction between the parties could not be of hire purchase but was simplicitor loan transaction is concerned, a perusal of the record indicates that the petitioner had authorized Mr.Ramniranjan Kedia, who was then a partner of the partnership firm to obtain hire purchase facility from the respondent. The sanctioned letter dated 24th August, 1994 would indicate that the same was acknowledged by the petitioner which reflected the terms on which the cars were agreed to be given on hire purchase. The petitioner had annexed pay orders / cheques dated 25th August, 1994

towards two advance equated monthly installments and other charges. The United Motors (India) limited had issued the invoices after the respondent forwarded a cheque of Rs.18,46,832/- in favour of the United Motors (India) Limited in respect of 4 Tata Estate Cars. The transaction had already taken place between the parties. The invoices however, were issued subsequently by the said United Motors (India) Limited. Even as the policies in respect of 4 cars were issued by the National Insurance Company Limited in favour of the respondent. Several documents produced on record by the parties and more particularly the finance documents of the petitioner itself clearly indicated that the petitioner had reflected the said transaction as hire purchase transaction and had reflected the payment of hire charges made to the respondent. The learned arbitrator has dealt with this issue at great length in all five matters and has rendered a finding of fact. In my view, there is thus no substance in this submission of the learned counsel for the petitioner.

49. Insofar as the submission of the learned counsel for the petitioner that the respondent had not claimed depreciation on the cars and hire charges were not treated as income by it in its books of account is concerned, no such issue was raised by the petitioner before the learned arbitrator. In any event since the findings rendered by the learned arbitrator are based on the documentary and oral

evidence led by both the parties on the issue that there was hire purchase transaction between the parties being not perverse, I am not inclined to accept this submission made by the learned counsel for the petitioner.

50. Insofar as the submission of the learned counsel for the petitioner that the document dated 11th May, 1999 could not have been taken on record in evidence, as no opportunity was made available to the petitioner to know whether such document was admitted and executed or not before the arguments or before even leading evidence is concerned, it is not in dispute that the said letter was addressed by the petitioner and was shown to the witness examined by the petitioner. The petitioner did not dispute the contents of the said letter nor dispute the existence of the said letter. I am thus not inclined to accept the submission of the learned counsel for the petitioner that the petitioner had no opportunity to deal with the said letter or to know whether such document was admitted in evidence or not.

51. Insofar as the submission of the learned counsel for the petitioner that the claims made by the respondent are barred by law of limitation on the ground of default in payment of each equated monthly installments would give a separate cause of action is concerned, a perusal of the record indicates that there was no

dispute that the petitioner had committed default in making payments of various installments. In the letter dated 11th May, 1999, the petitioner had admitted the liability and had requested for rebate and concession. In the several balance sheets and several financial documents of the petitioner after the transaction was entered into between the parties which were forming part of the record also clearly indicated the acknowledgement of liability of the petitioner to the respondent. The statement of claim was admittedly affirmed by the respondent on 4th June, 2001 and was filed on 11th June, 2001. In my view, the finding rendered by the learned arbitrator on the plea of limitation was right and does not warrant any interference.

52. Insofar as the remaining submissions made by the petitioner which are recorded in the earlier paragraphs of this judgment and which is reiteration of the submissions made in Arbitration Petition Nos.629 of 2009, 630 of 2009 and 631 of 2009 are concerned, for the reasons recorded by this Court in the judgments delivered in those three petitions, those submissions made by the petitioner are rejected as the same are without any merits. This Court need not deal with 8th additional judgments relied upon by the learned counsel for the petitioner which are already dealt with by this Court in Arbitration Petition No.631 of 2009.

53. For the reasons recorded aforesaid and the reasons

recorded in Arbitration Petition Nos.629 of 2009 and 630 of 2009 on the issues which are reiterated by the petitioner in this petition, in my view the petition is totally devoid of merits.

54. I therefore, pass the following order :-

a). Arbitration Petition No.632 of 2009 is dismissed.

b). No order as to costs.

(R.D. DHANUKA, J.)