

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 12TH DAY OF DECEMBER 2017

THE HON'BLE DR. JUSTICE ANITA SUMANTH

O.A. No.845 of 2017

In the matter of the
Arbitration and Conciliation
Act, 1996

And

In the matter of the
Arbitration Agreement Dated
17.11.2015 and Arbitration
Agreement Dated 22.08.2016

Ford Credit India Private Limited,
a Company incorporated and registered
under the Companies Act, 1956
represented by its Authorised Signatory
Mr.C.Ganesh
having its registered office at:
S.P.Koil Post,
Chengalpattu-603204
Tamil Nadu
and Business office at:
5th Floor, 4B Campus, RMZ Millenia
Dr.MGR Road, Perungudi,
Chennai-600 096.

... Applicant

-Versus-

1. Lathangi Motors Pvt Ltd
Represented by its Managing Director
Mr.M.P.Vikram Setty
No.688, 100 ft Ring Road,
15th Cross, JP Nagar 2nd Phase,
Bangalore-560 078.

2. Mr.M.P.Vikram Setty
S/o.Mr.M K Panduranga Setty
No.14, 'Sri Ranga',
Basavanagudi Bull Temple Road,
Bangalore-560 004.

3. Mrs.M.V.Ramavathi
W/o.Mr.M.P.Vikram Setty
No.14, 'Sri Ranga',
Basavanagudi Bull Temple Road,
Bangalore-560 004.

4. Mr.M.K.Panduranga Setty
S/o.Mr.Meda Kasturirangasetty
No.14, 'Sri Ranga',
Basavanagudi Bull Temple Road,
Bangalore-560 004.

..Respondents

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondents, its men, agents, servants, representatives, assigns or any other person acting under them or authorized by them from encumbering, alienating or otherwise dealing with the properties described in the Schedule to the Judge's Summons, pending conclusion of the arbitration proceedings.

This original application coming on this day before this court for hearing the court made the following order:-

This application is filed in terms of section 9 of the Act seeking an order of interim injunction restraining the respondent from encumbering, alienating or dealing with the schedule properties pending proceedings for arbitration. The schedule properties, three in number, are all situated in Bangalore. A status quo was granted on 04.09.2017 that is being extended from time to time.

2. Admittedly, disputes have arisen between the parties to this application pursuant to two agreements dated 17.11.15 and 22.08.16 extending financial assistance by way of a revolving line of credit, partly converted into a capital loan facility. The loan is secured by three deeds of simple mortgage executed by the respondents on 21.11.2015

over three immovable properties in addition to personal guarantees executed by R2, R3 and R4 and a promissory note dated 22.8.16.

3. On account of the defaults in re-payment, the applicant initiated the process of arbitration before Mr.Justice R.S.Ramanathan, Former Judge of this Court and the respondents have voluntarily subjected themselves to the proceedings being conducted at the Madras High Court Arbitration Centre. The proceedings for arbitration were initiated in terms of the dispute resolution clauses, clause 21 in agreement dated 17.11.2015 and clause 23 in agreement dated 22.08.2016. Both clauses are extracted hereunder:

'21. Dispute Resolution: (agreement dated 17.11.15)

21.All disputes, differences and/or claims, which may at any time arise between the Parties hereto or any person claiming under them in respect of this agreement whether during its subsistence and thereafter shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to a sole arbitrator nominated by the Managing Director of the FCIPL. The decision of the sole arbitrator shall be final and binding on all the parties to this agreement ad enforceable according to the laws in India. The cost of the arbitration shall be borne by Dealer.

21.2 In the event the arbitrator to whom the matter is originally referred is unable to act for any reason, the Managing Director of FCIPL shall appoint another person to act as arbitrator ("Successor Arbitrator"). The Successor Arbitrator

shall be entitled to continue the arbitration proceedings commenced by his predecessor without the need to initiate the arbitration proceedings from the beginning.

21.3 The venue of the arbitration shall be Chennai. The language of the arbitration proceedings shall be English.'

23. Dispute Resolution: (agreement dated 22.08.16)

23.1 All disputes, differences and/or claims, which may at any time arise between the Parties hereto or any person claiming under them in respect of this agreement whether during its subsistence and thereafter will be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and will be referred to a sole arbitrator nominated by the Managing Director of the FCIPL. The decision of the sole arbitrator is final and binding on all the Parties to this agreement and enforceable according to the laws in India. The cost of the arbitration will be borne by Borrower.

23.2 In the event the arbitrator to whom the matter is originally referred is unable to act for any reason, the Managing Director of FCIPL will appoint another person to act as arbitrator ("Successor Arbitrator"). The Successor Arbitrator will be entitled to continue the arbitration proceedings commenced by his predecessor without the need to initiate the arbitration proceedings from the beginning.

23.3 The venue of the arbitration is Chennai. The language of the arbitration proceedings is English.'

4. The following are the preliminary objections raised by Mr.Vinay Datha, learned counsel appearing for the respondents.

4.1 Firstly, he would argue that this court has no jurisdiction to hear the application since, according to

him, Article 21.3/23.3 of both the agreements only provides for the venue of arbitration to be Chennai. Reliance is placed on the judgement of the Supreme Court in (*S.B.P. & co vs Patel Engineering*) (2002 8 SCC 618).

4.2 Secondly, he would point out that the mortgaged properties are outside the territorial jurisdiction of this Court. The judgement of the Supreme Court in (*A.B.C.Laminart Pvt Ltd and another vs A.P.Agencies*) (AIR 1989 SC 1239) is relied upon for the proposition that in a contractual dispute as in the present case, the parametres for determining the proper court having jurisdiction to entertain a matter would be (i) the place where the contract is executed, (ii) where it is performed, (iii) where payment is made and (iv) where the defendant resides. In the present case, the location of the assets as well as the defendants is Bangalore. Reliance is placed on the judgements of the Supreme Court in *Videocon Industries Ltd vs Union of India* (2011) 6 SCC 161), *Bharat Aluminium vs Kaiser Aluminum* ((2012) 9 SCC 551), *Indus Mobile Distribution Pvt Ltd vs Datawind Innovations Pvt Ltd and others* (2017) 7 SCC 678) . He would also rely on judgements/decisions in *JSW Steel Ltd vs Indal Praxair Oxygen Co Ltd* ((2006) 11 SCC 521), *Dynasty Developers Pvt Limited vs Jumbo World Holdings Limited* (2008 (1) CTC 580) and *Sumer Builders Pvt Ltd vs Narendra Gorani* ((2016) 2 SCC 582) for his argument that the present application is to

enforce the security of immovable property situated in Bangalore and as such this court has no jurisdiction in terms of clause 12 of the Letters Patent.

4.3 Thirdly, the reliefs sought are in relation to immovable properties that cannot be subject to proceedings for arbitration. Hence the dispute cannot be subject to the process of arbitration.

4.4 Reliance is placed on a decision of the Delhi High Court in *PCP International Limited Vs. Lanco Infratech Ltd* (MANU/DE/2061/2015). That was a case where exclusive jurisdiction was conferred under contract to the courts at New Delhi. The Bench, however, concluded on the basis of the judgment of the Supreme Court in the case of *Enercon (India) Ltd and others vs. Enercon GMBH and another* (2014 5 SCC 1) that there was a difference between 'venue' and 'seat' of arbitration and merely because the arbitrator chooses to hold the proceedings at a venue different than the seat of arbitration, territorial jurisdiction would not be conferred on the Court in the venue of arbitration. The facts being distinguishable, this case does not advance the case of the respondent.

5. In response, Mr.N.L.Rajah, learned Senior Counsel appearing on behalf of Mr C. Ramesh for the applicant would reiterate the position that the application is maintainable.

6. Heard the learned counsel. The question relating to maintainability of the application is no longer res integra

in the light of the judgement of the Supreme Court in *Indus Mobiles* (supra). The provisions of section 20 of the Act dealing with 'place of arbitration' states thus:

'20. Place of arbitration.—(1) The parties are free to agree on the place of arbitration. (2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties. (3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.'

7. The Supreme Court in the case of *Indus* holds thus:

'19. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO judgment in no uncertain terms has referred to place as juridical seat for the purpose of Section 2(2) of the Act. It further made it clear that Section 20(1) and 20 (2) where the word place is used, refers to juridical seat, whereas in Section 20 (3), the word place is equivalent to venue. This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

20. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to seat is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction that is, no part of the cause

of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment seat is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.'

8. The clause in the present case states that '*the venue for the arbitration shall be chennai*'. The use of the word 'venue' by itself does not bring the matter within the restricted ambit of section 20(3) wherein the word is used solely in context of a temporary location for the purposes of consultation among its members, hearing witnesses/experts/parties, or for inspection of documents, goods or other property. The connotation ascribed to the word 'venue' in 20(3) is a one-off location to serve a specific purpose. However the word can be used in a wider sense as the parties appear to have in the present case. The Black's Law Dictionary defines the word 'venue' as follows:

"Venue (ven-yoo). (Law French "coming") (16c) Procedure. 1. The proper or a possible place for a lawsuit to proceed, usu. because the place has some connection either with the events that gave rise to the lawsuit or with the plaintiff or defendant. 2. The territory, such as a country or other political subdivision, over which a trial court has jurisdiction. - Also termed (in senses 1 & 2) proper venue. Cf. JURISDICTION."

It thus seems to me that the word 'venue' has been used by the parties to the present Agreements in the context of and

to mean 'place' as stated in section 20(1) of the Act.

Acting upon the clause for arbitration, an arbitrator based in Chennai has been nominated, accepted by the respondents and proceedings are on-going before the MHCAC on a regular basis. There is thus, no merit in the jurisdictional objection raised and the same stands rejected. The petition is held to be maintainable.

9. Admittedly, proceedings for arbitration have commenced before the arbitrator. In the light of section 9 (3) of the Act, the present prayer for the grant security may well be pursued before the learned Arbitrator who is requested to consider and decide the same, if and when made, as a prayer under section 17 of the Act. The protection granted by order dated 4.9.2017 extended periodically will continue for a period of four weeks from the date of receipt of this order. This application is disposed of in the above terms.

Sd./-DR.A.S.M.J

12/12/2017

//Certified to be true copy//

Dated at Madras this the day of 2018.
JJ 08/03/2018

COURT OFFICER(O.S.)

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