

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.10.2017

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

O.P.NO.658 OF 2017

Ford India Private Limited,
S.P. Koil Post,
Maraimalai Nagar,
Chengalpattu 603 034.
represented by its legal
Assistant Mr. B. Srinivasan

Petitioner

Vs

MPL Cars Private Limited,
represented by its Director,
Mr.S.Ravindranathan,
No.43/22, Josier Street,
Real Enclave, 306,
3rd Floor,
Nungambakkam,
Chennai 600 034.

Respondent

Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint a sole Arbitrator to adjudicate the dispute between the petitioner and respondent arising out of the Dealer Sales and Service Agreement dated 15.06.2011.

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For Petitioner : Mr.R. Senthilkumar

For Respondent : Mr. T. Saikrishnan

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ORDER

The present petition is filed in terms of Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking the appointment of a sole Arbitrator to adjudicate upon disputes as between the parties arising out of Dealer Sales and Service Agreement dated 15.06.2011.

2. The clause for dispute resolution is set out in Article 14 of the standard provisions of the Dealer Sales and Service Agreement dated 15.06.2011. The standard provisions forms part of the contract in accordance with Article 'E' of the main agreement and the Arbitration Clause thus stands incorporated into the Agreement. The Dispute Resolution Clause states thus;

'(2) (a) it is agreed that any dispute relating to or arising from this Agreement shall be referred to Arbitration to a sole Arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

(b) The Arbitration proceedings will be held in Chennai.

(c) Any party desiring to refer a dispute to Arbitration shall serve a notice to that effect to the other party.

(d) The Company shall along with such notice (if it has served the notice) or in response to such notice (if the other party has served the notice) send to the other party a list of three proposed arbitrators and the other party shall within 21 days of receiving such notice select one of such persons. The persons so selected shall be the sole Arbitrator.

(e) If the other party fails to select a person within the stated period its right to select the sole arbitrator from the list shall lapse and the Company shall select one of the said persons who shall be the sole Arbitrator.'

3. Heard Mr. R. Senthilkumar, learned counsel appearing for the petitioner and Mr.T.Saikrishnan, learned counsel appearing for the respondent.

4. The factum of disputes between the parties is admitted as in the existence of the Dispute resolution clause. The clause for dispute resolution provides for either party to initiate the process of arbitration. The petitioner, along with the notice of initiation or in response to the notice of initiation of arbitration by the petitioner is to suggest three proposed arbitrators. Thus, in either case, it is the petitioner that has the prerogative to nominate the arbitrator. If the respondent does not select an arbitrator from out of the list of three arbitrators provided by the petitioner within 21 days of receipt of such notice, then the petitioner shall select one arbitrator out of three proposed by it to act as sole arbitrator.

5. The main objection expressed by Mr.T.Saikrishnan is that a notice had been issued by the respondent as early as on 17.2.2017 proposing proceedings for arbitration. The notice was sent under cover of RPAD to the Corporate Office of the petitioner at Gurgaon. The cover was returned as 'refused' by the petitioner on 17.2.2017 and hence, the respondent proceeded, to appoint a retired Judge of the Madras High Court, Justice K.Swamidurai as sole arbitrator. The appointment was communicated to the petitioner vide letter dated 22.6.2017. It is only in response to letter dated 22.6.2017 that the petitioner issued letter dated 8.8.2017 suggesting three names in accordance

with the dispute resolution clause. Thus according to the respondent, the petitioner had lost its right to initiate proceedings as per the clause in the Agreement. De-hors the objection raised, learned counsel for the respondent does not express objection to any one of the three arbitrators suggested by the petitioner now and would agree to concur with the decision of the Court in this regard.

6. Accordingly and on the concurrence of both counsel, I appoint **Mr. Justice N.V. Balasubramanian**, Retired Judge, Madras High Court as the sole arbitrator to enter upon reference, issue notice and hear the parties. The learned Arbitrator is at liberty to fix his remuneration as well as schedule of expenses which shall be borne by both parties equally. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules as per request of both learned counsel.

7. The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

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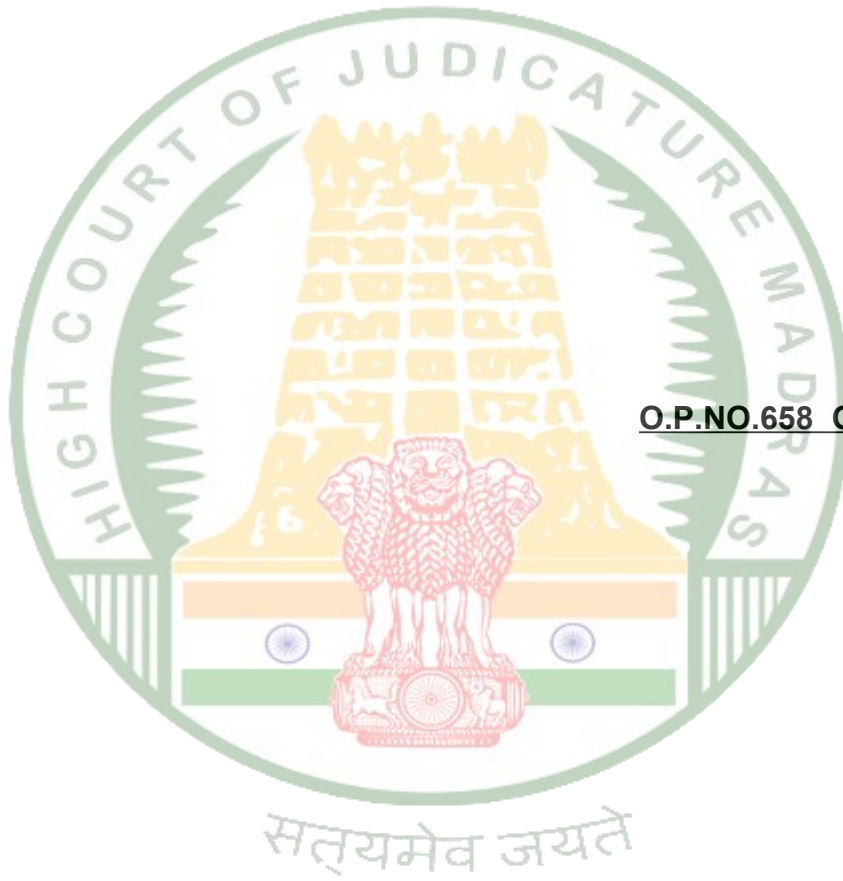
Speaking Order/non-speaking order

Index:yes/No

msr

DR. ANITA SUMANTH, J.

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