IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 08TH DAY OF OCTOBER 2018

THE HON'BLE MR. JUSTICE C.SARAVANAN

O.P. No.354 of 2018

In the matter of Arbitration and Conciliation Act, 1996
and
In the matter of Master Rental Agreement dated 26.05.2014

M/s.Force 1 Guarding Services Pvt. Ltd.,
rep. by its Authorized Signatory,
R.K.Murthy,
No.6, 5th Cross Street, Indira Nagar,
Adyar, Chennai-600 020. ... Petitioner

-Versus-

1. Trans Car India Private Limited,
   rep. by its Authorized Signatory,
   No.355A, G.S.T.Road, Alandur,
   Chennai-600 016.

2. Daimler Financial Services Pvt. Ltd.,
   rep. by its Authorized Signatory,
   RMZ Millenia Business Park, Campus 3B,
   Unit 301 & 302, No.143, Dr.M.G.R.Road,
   Perungudi, Chennai-600 096. ... Respondents

Original petition praying that this Hon'ble Court be pleased to appoint an Arbitrator as per clause 26(2) of the Master Rental Agreement dated 26.05.2014 to adjudicate the dispute which has arisen.

This Original Petition coming on this day before this court for hearing, the court made the following order:-

The present petition has been filed under section 11 (6) of the Arbitration and Conciliation Act, 1996. The petitioner had leased a vehicle from the 2nd respondent vide a Master Rental Agreement dated 26.5.2014. As per the aforesaid Master Rental Agreement the petitioner was required to pay a monthly rental of Rs.89,703/- for a period of 30 months.

2.The petitioner paid a refundable rental security deposit of Rs.1,79,406/- equivalent to 2 months rental to the 2nd respondent. The vehicle was sourced from the 1st respondent dealer. Initial payments for the 1st monthly rental and the security deposit were paid through the 1st respondent. The 1st respondent also handed order a receipt on 16.5.2014 and acknowledged the payment of the 1st monthly rental and the "refundable security deposit" totalling to a sum of Rs.2,69,109/-. The payments have been adjusted between the respondents.

3.The 1st respondent dealer delivered the vehicle to the petitioner and facilitated its registration as per the industry practice. At the expiry of lease term the vehicle was delivered to the 1st respondent who also deals in used cars. On the date of delivery on 25.05.2017, the 1st respondent acknowledged the receipt to the applicant. However, despite delivery of the vehicle to the 1st respondent, the 2nd respondent neither issued "No Objection Certificate" or refunded the refundable security deposit of Rs.1,79,406/- to the petitioner despite several reminders to the 2nd respondent.

4.The 2nd respondent appears to have invoked penalty clause on account of alleged excess wear and tear of the vehicle even though the vehicle has clocked merely 9000 km during three years lease period as against 60,000 agreed between the petitioner and the 2nd respondent.

5. By an email dated 15.6.2017, the 2nd respondent demanded an amount of Rs.2,57,888,35/- towards excess wear and tear and after adjusting the refundable security deposit requested the petitioner to pay a balance sum of Rs.78,482.35. In this connection several email correspondence have been exchanged wherein the petitioner questioned the authority for such deduction and marked a copy of the e-mail to 1st respondent.

6. By letter dated 18.08.2017 and by another email dated 18.9.2017, the petitioner wanted to know the reason how the demand was reduced from Rs.2,57,888.354/- to Rs.98,731.84 which was almost 62% from the initial proposal.

7. The petitioner by the mail dated 7.9.2017 agreed to receive a sum of Rs.80,474/- "under protest" and "without prejudice" to the right to claim the withheld amount of Rs.98,932/-. The petitioner has also filed a complaint with Sub-Inspector of Police, Adyar.

8. Be that as it may dispute has arisen between the applicant and the 2nd respondent. Under these circumstances the petitioner issued a legal notice dated 02.01.2018 and called upon the 2nd respondent herein to pay a sum of Rs.98,932/- together with interest failing which proposed to invoke the arbitration clause 26.2 in the agreement and called upon the 2nd respondent to nominate an arbitrator to adjudicate the dispute.

9. The 1st respondent has filed a counter and opposed their inclusion in the petition as 1st respondent and stated that they are neither party to the dispute between the petitioner and the 2nd respondent nor are bound by arbitration clause between the petitioner and the 2nd respondent. It was further submitted that they were merely the dealers who facilitated the delivery and took re-delivery of the vehicle that was leased out by the petitioner from the 2nd respondent.

10. Heard, Mr.M.R.Uma Vijayan the learned counsel for the petitioner and Mr.T.V.Lakshmanan learned counsel for the 1st respondent. The learned counsel for the petitioner and the learned counsel for the 1st respondent relied on the latest decision of the Hon'le Supreme Court in **Cheran properties Ltd versus Kasturi & Sons Ltd**, 2018 SCC Online SC 431.

11. It is a case of the petitioner that in view of the decision of the Supreme Court, the 1st respondent also can be made party to the proceeding considering the fact that it is a part of the group companies of the 2nd respondent as the circumstances indicate that intent of the loan agreement was meant to bind both of them to the agreement. The learned counsel for the 1st respondent also relied on the same decision to say that the doctrine of group company enunciated and **Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.**, (2013) 1 SCC 641 and re-affirmed in the above decision cannot be applied in the facts of the present case.

12. I have considered the rival arguments and the facts on record. The 1st respondent is a dealer of the vehicle that was leased by the petitioner. However, the financial implications and arrangements are purely between the applicant petitioner and the 2nd respondent. Though, the

2nd respondent finances vehicles sold by the 1st respondent, there is no indication in the agreement that the 1st respondent was in contemplation in the financial arrangements except to receive initial payments from the petitioner and to adjust the same towards sale consideration between the respondents.

13. The Hon'ble Supreme Court in **Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.**, (2013) 1 SCC 641 has held that "There may be transactions within a group of companies. The circumstances in which they have entered into them may reflect an intention to bind both signatory and non-signatory entities within the same group. In holding a non-signatory bound by an arbitration agreement, the Court approaches the matter by attributing to the transactions a meaning consistent with the business sense which was intended to be ascribed to them. Therefore, factors such as the relationship of a non-signatory to a party which is a non-signatory to the agreement, the commonality of subject matter and the composite nature of the transaction weigh in the balance. The group of companies doctrine is essentially intended to facilitate the fulfilment of a mutually held intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non-signatories. The

effort is to find the true essence of the business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory. Question is does the requirement, as in Section 7, that an arbitration agreement to be in writing exclude the possibility of binding third parties who may not be signatories to an agreement between two contracting entities? The evolving body of academic literature as well as adjudicatory trends indicate that in certain situations, an arbitration agreement between two or more parties may operate to bind other parties as well."

14.In para 27 the Hon'ble Supreme Court summarized as follows:

> "Explaining the legal basis that may be applied to bind a non-signatory to an arbitration agreement, this Court held thus:
>
> > "The first theory is that of implied consent, third-party beneficiaries, guarantors, assignment and other transfer mechanisms of contractual rights. This theory relies on the discernible intentions of the parties and, to a large extent, on good faith principle. They apply to private as well as public legal entities. The second theory includes the legal doctrines of agent-principal relations, apparent authority, piercing of veil (also called "the alter ego"), joint venture relations, succession and

> estoppel. They do not rely on the parties' intention but rather on the force of the applicable law.”

15.The third circumstances is that the group of companies doctrine, where an arbitration agreement entered into by a company within a group of companies can bind its non-signatory affiliates, if the circumstances demonstrate that the mutual intention of the parties was to bind both the signatory as well as the non-signatory parties."

16. The Court further held that "The group of companies doctrine" has been applied to pierce the corporate veil to locate the "true" party in interest, and more significantly, to target the credit worthy member of a group of companies. Though the extension of this doctrine is met with resistance on the basis of the legal imputation of corporate personality, the application of the doctrine turns on a construction of the arbitration agreement and the circumstances relating to the entry into and performance of the underlying contract.

17. The principle which underlies Chloro Controls is that an arbitration agreement which is entered into by a company within a group of companies may bind non-signatory

affiliates, if the circumstances are such as to demonstrate the mutual intention of the parties to bind both signatories and non-signatories. In applying the doctrine, the law seeks to enforce the common intention of the parties, where circumstances indicate that both signatories and non-signatories were intended to be bound.

18. In this case, the respondents are not group companies. Neither has the petitioner brought on record any document to establish the same. The 1st respondent is a mere dealer, who deals in the cars manufactured by the manufacturers and financed by the 2nd respondent.

19. The petitioner had the choice of other finance company other than 2nd respondent but opted for the scheme offered by the 2nd respondent which may or may not be a group company of the manufacturer of the leased car.

20. However, it will not *ipso facto* mean an exclusive dealer of the vehicle like the 1st respondent also becomes a group company unless the petitioner is able to establish the transactions were not at an arms length.

21. The Master Rental Agreement was not intended to bind the 1st respondent. The 1st respondent was not in contemplation when the said agreement was signed. Further, the petitioner has merely asked for appointment of an arbitrator to resolve the dispute between the petitioner

and the 2nd respondent in terms of Clause 26 (2) of the Master Rental Agreement dated 26.05.2014.

22. Therefore, there was and is no justification in arraigning the 1st respondent in the arbitration proceeding. Hence, the petition is liable to be dismissed as far as the 1st respondent is concerned.

23. It is always open for the petitioner to summon the 1st respondent in the arbitration proceeding and elicit evidence to contradict the 2nd respondent's claim towards alleged excess wear and tear.

24. Under these circumstances, the Hon'ble Mr.Justice P.Shanmugam (Retd.), New No.204, T.T.K. Road, Teynampet, Chennai-600 115 (Mob:9444856700) is appointed as a sole arbitrator to resolve the dispute between the petitioner and the 2nd respondent. The petitioner and the 2nd respondent shall therefore approach Hon'ble Mr.Justice P.Shanmugam (Rtd.), who shall appropriate notice to the second respondent and to proceed further.

25.The requirement of Section 11(8) of the Act is dispensed with. The petitioner is directed to serve copy of this order and obtain consent of Hon'ble Mr.Justice P.Shanmugam (Retd.) as per Section 11(8) of the Act.

26.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.

27. application is allowed accordingly.

Sd/-C.S.N.J

08/10/2018

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

JJ 15/03/2019