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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (COMM) 435/2016

INDIA INFOLINE FINANCE LTD

..... Petitioner

Through: Mr Vibhor Garg, Mr Tushar Gupta
and Ms Puja Agarwal, Advocates.

versus

MRG AUTO PVT LTD & ORS.

..... Respondents

Through: Mr Tarun Rana, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **26.02.2018**

1. The petitioner has filed the present petition under Section 29A(4) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that the time for making the award be extended for a period of four months. The petitioner states that Shri O. P. Gupta has been appointed as an Arbitrator to adjudicate the disputes that have arisen between the parties in connection with the Loan Agreement dated 21.09.2012 (hereafter 'the Agreement'). The Agreement contains an arbitration clause, which is set out below:-

“26. DISPUTE RESOLUTION:

26.1 This agreement shall be construed in accordance with the laws force in India, if any controversy or dispute should arise between the parties in performance, interpretation or application of the loan agreement involving any matter, the same shall be submitted to arbitration of the sole arbitrator appointed by Lender whose decision shall be final, conclusive and bindings on the

parties. The arbitration proceedings shall be conducted in accordance with the provisions of the Indian arbitration and conciliation Act, 1996.

26.2 Any such arbitration shall be:

- a. Proceeded in English and the place of arbitration shall be the place decided by the lender at its sole discretion; and
- b. Concluded within 3 (three) months of the appointment of the arbitrator/s.
- c. None of the parties shall be entitled to commence or maintain any action in a court of law in relation to the dispute, except for the enforcement of an arbitral award granted pursuant to this clause, or to the extent permitted under law. The parties agree that the relevant courts of competent jurisdiction shall have the jurisdiction to entertain any proceedings for interim relief related to this agreement whether during its term or after expiration or termination.”

2. Mr Garg, the learned counsel appearing for the petitioner states that the period of three months as specified under the arbitration clause has expired and, therefore, the time for making the award is required to be extended. He states that some of the respondents have filed the statement of defence but the other respondents have not filed statement of defence before the said Arbitrator and this is the principal reason of delay.

3. The learned counsel for the respondents has opposed the present petition principally on the ground of jurisdiction. According to him, the Courts in Ludhiana would have the exclusive jurisdiction for determination of matter relating to arbitration. He further states that the respondents have already filed a petition under Section 14 of the Act seeking a declaration that the mandate of the Arbitrator is terminated, *inter alia*, on the ground that the Arbitral proceedings initiated prior to the appointment of the Arbitrator are

still pending.

4. Mr Rana, the learned counsel appearing for the respondents states that the petitioner had invoked the arbitration clause and had appointed an arbitrator, Mr Chaman Lal Vashisht, Advocate, Ludhiana who had entered the reference. The said Arbitrator, however, did not render the award within the specified period of time but there is no order terminating the said proceedings. Therefore, the said proceedings are pending and Shri O.P. Gupta, the arbitrator appointed subsequently has no jurisdiction to proceed further.

5. Mr Garg contended that the mandate of Shri Chaman Lal Vashisht came to an end as he had failed to make an award within the prescribed period. Consequently, the petitioner had appointed Sh O.P. Gupta in terms of the arbitration clause. He also states that the notice dated 03.06.2016 issued by the petitioner also specifically stated that the arbitration would be conducted in New Delhi.

6. It is seen from the arbitration clause that the choice of the place where the arbitration is as per the discretion of the lender (petitioner). Since the Arbitrator appointed earlier had not rendered the award, his mandate stood terminated. In this view, the petitioner was well within its right to appoint another arbitrator to conclude the arbitration. Since the place of arbitration was at the discretion of the petitioner, the petitioner also decided that the proceedings be conducted at New Delhi. It is also not in dispute that the arbitrator appointed by the petitioner has been conducted proceedings at New Delhi.

7. The contention that the respondents have been delaying the

proceedings appears to be merited. It is seen from the order dated 07.09.2016 passed by the Arbitrator that a Statement of Defence had already been filed on behalf of respondent nos.1 and 5. There is some controversy as to whether the said Statement of Defence could also be construed as a Statement of Defence on behalf of the respondent nos. 2 to 4 as contended on behalf of the respondents; however, it is not disputed that the said Statement of Defence was filed after a period of two months.

8. It is further seen that the matter is now before the Arbitrator for recording of evidence. In this view, this Court considers it apposite to extend the period of time for making the award for a further period of three months from today.

9. It is also clarified that this is without prejudice to rights and contentions of the parties including the contention that the Arbitrator does not have any jurisdiction to proceed with the matter.

10. The petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 26, 2018

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