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

+ **O.M.P. (COMM) 436/2016**

INDIA INFOLINE FINANCE LTD

..... Petitioner

Through Mr Vibhor Garg, Mr Sumit Kr. Mishra,
Mr Nishank Tyagi, Mr Deepanshu Panwar and
Ms Harmeet Kaur, Advocates.

versus

MRG AUTO PVT LTD & ORS.

..... Respondents

Through Mr Tarun Rana, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **22.03.2018**

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 learned counsel appearing for 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 20.07.2011 (hereafter 'the Agreement'). The Agreement contains an arbitration clause, which is set out below:-

"29. DISPUTE RESOLUTION

29.1 This Agreement shall be construed in accordance with the laws in 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

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.

29.2 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 a Statement of Defence has been filed on behalf of respondent no.1 after almost two months. He further states that although the Statement of Defence has not been filed by the other respondents, they are claiming that the Statement of Defence filed by respondent no.1 is also on their behalf.

3. 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 upon the reference. He further states that although the said arbitrator did not

deliver an arbitral award within the specified time, there is no order terminating the arbitral proceedings before him. He submits that in the circumstances, Sh O.P. Gupta, who has now been appointed as an Arbitrator, has no jurisdiction to proceed in the matter. He also submits that the respondents had filed a petition under Section 14 of the Act before the Bombay High Court (Commercial Arbitration Petition No. 92 of 2016 captioned '*MRG Auto Pvt. Ltd. & Ors. v. India Infoline Finance Ltd. & Ors.*') seeking termination of the mandate of Sh. O.P. Gupta as an arbitrator. The said petition was dismissed on 03.11.2017 by the Bombay High Court and the Special Leave Petition preferred against the said order has also been dismissed by the Supreme Court.

4. It is seen from the arbitration clause that the choice of the place, where the arbitration is to be conducted 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 proceedings. Since, the place of arbitration was at the discretion of the petitioner, the petitioner had 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 conducting proceedings at New Delhi.

5. The contention, that the delay in the proceedings is attributable to the respondents, appears to be merited. Mr Rana further states that the delay was also caused because the respondents had filed an application under Section 16 of the Act which was required to be disposed of. Be that as it may, it is not disputed that the delay in completion of the proceedings is not

attributable to the Arbitrator. It is clear that he has acted with due dispatch. This Court is also informed that the matter before the Arbitrator is at the stage of 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.

6. It is also clarified that this is without prejudice to the all rights and contentions of the parties.

7. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

MARCH 22, 2018

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