

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 01ST DAY OF OCTOBER 2019

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

A. Nos.7385, 7387, 7390, 7392, 7393, 7400, and 7402/2019

in

A.Nos.3105, 3121, 3107,3109, 3110, 3117 and 3119 of 2019

In the matter of Arbitration
& Conciliation Act.

And

In the matter of dispute
between Daimler Financial
Services India Private
Limited and U - Trans and 2
others

In Contract No's..... to
.....dated

A.Nos.3105, 3121, 3107,3109, 3110, 3117 and 3119 of 2019:

Daimler Financial Services India Pvt. Ltd.,
Rep.by its Chief Manager Legal
Unit 202, 2nd Floor, Campus 3b,
RMZ Millennia Business Park,
143, Dr.Mgr Road, Perungudi,
Chennai 600 096. India.

: Applicant
in all applications

Vs.

1. U-Trans
Rep.by its Partner, Mr.Sirajahmed
S.Umachigi,
No.2538, Ward No.1, Corporation No.2528-45
Coen Road, Hubli 580020.

2. Mr.Sirajahmed, S.Umachigi
No.120, USA Castle, New Badami Nagar,
Keshwapur, Hubli - 580020.

Coen Road, Hubli - 580020. Karnataka. :Respondents
in all applicaitons

A.No.7385, 7387, 7390, 7392, 7393, 7400 and 7402 of 2019:

1. U-Trans
Rep.by its Partner, Mr.Sirajahmed
S.Umachigi,
No.2538, Ward No.1, Corporation No.2528-45
Coen Road, Hubli 580020.

2. Mr.Sirajahmed, S.Umachigi
No.120, USA Castle, New Badami Nagar,
Keshwapur, Hubli-580020.

3. Mr.Sabil Mohamed Umachigi
No.2538, Ward No.1, Corporation No. 2528-45
Coen Road, Hubli - 580020. Karnataka.

:Applicants
in all applications

-VS-

Daimler Financial Services India Pvt. Ltd.,
Rep.by its Chief Manager Legal
Unit 202, 2nd Floor, Campus 3b,
RMZ Millennia Business Park,
143, Dr.Mgr Road, Perungudi,
Chennai-600 096. India.

..Respondent
in all applications

A.No.7385 of 2019:

Application praying that this Hon'ble Court be
pleased to condone the delay of 40 days in filing
application to set aside the order in application
No.3105/2019 dated 20.06.2019, extending time for
arbitration by 3 months.

A.No.7387 of 2019:

Application praying that this Hon'ble Court be
pleased to condone the Delay of 40 days in filing
application to set aside the order in application
No.3110/2019 dated 20.06.2019, extending time for

arbitration by 3 months

A.No.7390 of 2019:

Application praying that this Hon'ble Court be pleased to condone the delay of 40 days in filing application to set aside the order in application No.3107/2019 dated 20.06.2019, extending time for Arbitration by 3 months.

A.No.7392 of 2019:

Application praying that this Hon'ble Court be pleased to condone the delay of 40 days in filing application to set aside the order in Application No.3119/2019 dated 20.06.2019, extending time for Arbitration by 3 months.

A.No.7393 of 2019:

Application praying that this Hon'ble Court be pleased to condone the delay of 40 days in filing application to set aside the order in Application No.3121/2019 dated 20.06.2019, extending time for Arbitration by 3 months.

A.No.7400 of 2019:

pleased to condone the delay of 40 days in filing application to set aside the order in Application No.3107/2019 dated 20.06.2019, extending time for Arbitration by 3 months.

A.No.7402 of 2019:

Application praying that this Hon'ble Court be pleased to condone the delay of 40 days in filing application to set aside the order in Application No.3109/2019 dated 20.06.2019, extending time for Arbitration by 3 months.

These Applications coming on this day before this court for hearing the court made the following order:

These applications are filed by the applicants to condone the delay of 40 days in filing applications to set aside the order dated 20.06.2019 in Application Nos.3105, 3121, 3107, 3109, 3110, 3117 and 3119 of 2019 extending time for arbitration by three months.

2. Heard the learned counsel appearing for the applicants and the learned counsel appearing for the respondent.

3. Earlier, applications under Section 29-A of the Arbitration and Conciliation Act have been moved by the respondent herein. After issuing notice to the other side, by order dated 20.06.2019, time was extended by three months for completion of the arbitration proceedings, which comes to end on 10.10.2019. The above said extension was granted

in the absence of the respondents therein, as despite service of notice on the respondents and their names being printed in the cause list, the respondents had not appeared in person or through counsel.

4. It is stated by the learned counsel appearing for the applicants that the respondent herein had suppressed the fact that the claim itself was filed on 31.07.2019 and on the date of filing of the said applications, the arbitration proceedings had not commenced.

5. The learned counsel for the applicants further pointed out that, on 21.08.2019, the respondent has filed an amendment application before the learned Arbitrator, when the time for completion of the arbitral proceedings itself comes to an end on 10.10.2019. Hence, the learned counsel for the applicants contends that the proceedings itself are vitiated by the illegality and fraud and the respondent obtained extension of time by suppression of material facts.

6. These applications are filed only for condoning the delay. Insofar as these applications are concerned, it is stated that the third applicant, who is the partner of the first applicant firm, was not in India from the second week of April and therefore, they could not receive the notices and they gained knowledge of the order extending the time for completion of arbitral proceedings only later. Thereafter, they engaged a counsel and have come before this Court by filing applications to set aside the order granting extension of time.

7. It is seen that the dispute is referred before the learned Arbitrator. Even if the claim is filed later, it is open to the applicants to raise the issue of limitation before the learned Arbitrator. Having received the notice and abstained from Court, the applicants cannot be allowed to take advantage of their own wrong. Besides, this Court had not decided the rights of the parties in the said order and they are already before the Arbitral Tribunal for the same. Therefore, no prejudice would be caused, if the parties are directed to appear before the learned Arbitrator for concluding the proceedings within the time.

8. In view of the observation and direction, these applications are dismissed.

Sd/.P.S.N.J.
01.10.2019

//Certified to be a true copy//
Dated this the day of 2019.

SU/19.11.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.