

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2020

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.396 of 2020

M/s.Nissan Renault Financial Services India Private Limited
rep. by its Authorised Signatory
Mr.P.Kasiviswanathan
having its registered office at
ASV Ramana Towers, V Floor,
No.52, Venkatnarayana Road,
T. Nagar,
Chennai - 600 017.

...Petitioner

-V-

1.M/s.Sri Sri Sri Auto Cars India Pvt. limited,
rep. by its Director Mr.Srinivas Membi,
D.No.6-1, 346/1&2, New Bhoiguda,
Padma Rao Nagar,
Secunderabad - 500 025.

also at

M/s.Sri Sri Sri Auto Cars India Pvt. limited,
rep. by its Director Mr.Srinivas Membi,
3/12/72, L.N. Nagar to Nagol Main Road, Saroor Nagar,
Lal Bahadur Nagar (M) (Town) (Mandal),
Ranga Reddy Ddistrict,
Telangana.

2.Sunetha Membi

3.Mr.Srinivas Memibi

...Respondents

Prayer: Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint a sole Arbitrator as provided under Clause 29 of the Facility Agreement dated 15.09.2017 to adjudicate upon the differences and disputes between the parties under the said Agreement dated 15.09.2017.

For petitioner : Mr. Surasika Parthasarathy

ORDER

The petitioner has filed the above petition seeking appointment of a Sole Arbitrator as provided in the Agreement between the petitioner and the respondents.

2.The facts in brief which are required for disposing of the above petition are as follows:

The petitioner and the respondents had entered into a Facility Agreement dated 15.09.2017 in which the petitioner which is a Non-Banking Financial Company, had extended a loan facility to the respondents for the purpose of a new car floor plan inventory, spares and accessories. The petitioner had sanctioned a loan of Rs.6crores under the Facility Agreement. As per the terms of the Agreement, repayment of the Principal in the case of sale of vehicles, spares and accessories was to be paid immediately within ten days from the date of the Sale and with

reference to the unsold vehicles parts and accessories repayment was to be on the respective due dates. The loan facility was thereafter increased to a sum of Rs.9,60,00,000/-. The Agreement further provided that if there is any dispute between the parties the same shall be settled by referring the same to the arbitration consisting of a single Arbitrator.

3.The petitioner would submit that the respondents had not adhered to the repayment schedule and despite several reminders from the petitioner, had failed to repay the same. The petitioner was constrained to issue two Demand Notices dated 24.04.2020 and 28.05.2020 seeking repayment of the loan amount. Thereafter, under the Loan Recall Notice dated 02.07.2020, the respondents were directed to repay the outstanding of Rs.5,12,68,459/- within a period of seven days from the date of notice. Even this notice has not been responded to. Thereafter, the petitioner has issued an Arbitration Intimation Notice dated 04.08.2020 informing the respondents that they had nominated Justice C.T. Selvam, former Judge of this Court as a Sole Arbitrator and seeking their concurrence. Although the said notice was received by the respondents they did not give their

consent for the appointment of Justice C.T. Selvam, former Judge of this Court as Arbitrator. Therefore, the petitioner has come forward with the present petition.

4. Even before this Court the respondents who had been served with the notice had failed to appear before this Court or for themselves represented. Therefore, the respondents were set *ex parte*.

5. Heard Ms. Surasika Parthasarathy, learned counsel for the petitioner who would bring the arbitral clause to the notice of this Court and the fact that the respondents have not sent any reply to the Demand Notices as well as the Loan Recall Notice.

6. The learned counsel would also submit that the respondents despite receiving the arbitration notice had not responded to the same either by giving their consent or by forwarding a name of an Arbitrator. In these circumstances, the petitioner has therefore moved this Court and even in the instant proceedings, the respondents despite being served have

chosen to keep away.

7.The documents filed would indicate that there is a dispute between the parties and considering the fact that the parties had agreed to refer all their disputes to the arbitration consisting of a single Arbitrator as per Clause 29 of the Facility Agreement dated 15.09.2017.

8.In such view of the matter and having regard to the Agreement for Joint Development dated 23.05.2012 entered into between the parties, it is ordered as follows:

i) Honourable Mr.Justice N.Authinathan, (Retd.), Former Judge, Madras High Court, No.37, A-Block, Lakshmi Nivas, Marchalls Road, Chennai – 600 008, Mobile No: 94430 84123, Email: justiceauthinathan@gmail.com, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the

order. It is open to the respondent to raise all legal objections as to the validity of contract.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per law.

iv) 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.

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

04.11.2020

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
mps

To
Mr.Justice N.Authinathan, (Retd.),
Former Judge, Madras High Court,
No.37, A-Block, Lakshmi Nivas,
Marchalls Road,
Chennai – 600 008,
Mobile No: 94430 84123

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