

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.771 of 2019

Nissan Renault Financial Services India Pvt., Ltd.,
Rep. by its Authorized Signatory,
Mr.Amarnath,
ASV Ramana Towers, 5th Floor,
52, Venkatnarayana Road,
T.Nagar, Chennai - 600 017.

.. Petitioner

vs.

1.M/s.Padam Motors Pvt. Ltd.,
Rep. by its Director Mr.Amarjeet Mehta
behind hero Honda Showroom,
Bibiwala Road, Bathinda,
Punjab - 151 001.

2.Amarjeet Mehta,
behind Hero Honda Showroom,
Bibiwala Road, Bathinda,
Punjab - 151 001.

3.Babita Mehta,
behind Hero Honda Showroom,
Bibiwala Road, Bathinda,
Punjab - 151 001.

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4. Padam Broadcasting Corp. Ltd.,
Rep. by its Director Mr. Amarjeet Mehta
having office at R/o HNO - 18313,
behind hero Honda Showroom,
Bibiwala Road, Bathinda,
Punjab - 151 001.

5. A.B. Mehta Motor Private Ltd.,
Rep. by its Director Mr. Amarjeet Mehta
having office at R/o HNO - 18313,
behind hero Honda Showroom,
Bibiwala Road, Bathinda,
Punjab - 151 001.

6. Dalvir Singh,
having office at R/o HNO - 18313,
behind hero Honda Showroom,
Bibiwala Road, Bathinda,
Punjab - 151 001.

7. Ram Kumar,
having office at R/o HNO - 18313,
behind hero Honda Showroom,
Bibiwala Road, Bathinda,
Punjab - 151 001.

.. Respondents

Prayer : Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate the disputes between the petitioner and the respondents.

For Petitioner : Mr. Balasubramaniam

For Respondents : Mr. R. Veera Raghavan

ORDER

The petitioner has filed this Original Petition to appoint a Sole Arbitrator to adjudicate the disputes between the petitioner and the respondents.

2. It is the case of the petitioner that the first respondent borrowed a sum of Rupees Twenty One Crores and the facility agreement came to be executed between the parties on 23.10.2014. Thereafter, the said facility was enhanced to Rupees Twenty Nine Crores vide a supplementary agreement dated 24.03.2015. Further, there was a memorandum of understanding executed between the parties on 15.05.2018 and thereafter, Term Loan Agreement came to be executed between the parties on 19.11.2018. The first respondent failed to adhere to the terms and conditions of the Term Loan Agreement and did not make payment in time. Hence, the Original Petition to appoint a Sole Arbitrator.

3. The learned counsel appearing for the petitioner submitted that the petitioner has already initiated proceedings under SARFAESI Act. However, he has not yet recovered any amount. Hence, the learned counsel

prays for appointment of a Sole Arbitrator in order to solve the dispute between them.

4. The main contention of the learned counsel for the respondents is that the seventh respondent induced guarantor at the later point of time and the signature in the Term Loan Agreement is a forged one. Further it is only the apprehension of the learned counsel that if the objections raised by the respondents is overruled by this Court and an Arbitrator is appointed, it will take away the rights of the respondents to raise such grounds before the Arbitral Tribunal. According to him, once appointment of Arbitrator is made under Section 11 (6) of the Arbitration and Conciliation Act, 1996, it is final and there is no appeal. Hence, it is his contention that whether the agreement is valid or not is to be decided first.

5. From the submissions, it is seen that the main contention of the respondents, particularly, the seventh respondent in respect of the Term Loan Agreement is that signature found in the Term Loan Agreement is a forged one. Hence, this Court is of the view that except the Term Loan Agreement, all other contracts between the parties are not disputed. Even in

respect of the Term Loan Agreement, the only allegation of the seventh respondent is that his signature has been forged. However, existence of the Agreement is not seriously disputed by the parties. In such view of the matter, this Court is of the opinion that the objections raised by the respondents can be very well adjudicated by the Tribunal itself under Section 16 of the Arbitration and Conciliation Act, 1996. The Tribunal may rule on its own jurisdiction in respect of the objections with regard to the existence or validity of the Term Loan Agreement. Such power is already conferred by the statute. Both the parties are at liberty to raise their respective objections in this regard and the learned Arbitrator shall decide the issue on merits independently.

6. Accordingly, Justice Mr.G.Rajasurya (Retired), Flat No.3, Mohan Nagar Main Road, Opposite to Bharath University, Madambakkam, Chennai - 600 126 is appointed as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. 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. The learned Arbitrator is at

liberty to fix his remuneration and other incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The appointment of the Arbitrator will be subject to the disclosure and declaration made, as per the Sixth Schedule to the Arbitration and Conciliation Act, 1996 coupled with the amendments made therein.

7. The Original Petition is allowed. The parties shall bear their own costs.

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Note : The registry is directed to communicate a copy of this Order to :

Justice Mr.G.Rajasurya (Retired),
Flat No.3, Mohan Nagar Main Road,
Opposite to Bharath University,
Madambakkam, Chennai - 600 126

N.SATHISH KUMAR, J.

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