

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/7/2020

C O R A M

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.Nos.8028, 8031, 8032, 8034, 8041, 8044 and 8046 of 2019

Daimler Financial Services India Pvt Ltd
rep. By its Chief Manager Legal
Unbit 202, II Floor, Campus 3 B
Rmz Millennia Business Park
143 Dr. MGR Road
Perungudi
Chennai 600 096.

... Applicant

Vs

1. U-Trans
rep. By its Partner
Mr.Sirajahmed S. Umachigi
No.2538 Ward No.1, सत्यमेव जयते
Corporation No.2528 – 45 Coen Road
Hubli 580 020.

2. Sirajahmed, S.Umachigi

3. Sabil Mohamed Umachigi

...

Respondents

Applications filed under XIV Rule 8 of Original Side Rules, 1956

r/w. Section 29 A (4) of the Arbitration and Conciliation Act, 1996.

For applicant	...	Mr.S.Namasivayam
For respondents	...	Mr.J.Srinivasa Mohan for M/s. TVJ Associates

COMMON ORDER

These applications have been filed to extend the time for completion of arbitration between the applicant and respondents by six months.

2. The brief facts are as follows:-

Respondents availed financial assistance for the purchase of commercial vehicles, including Trucks. Agreements were entered into between the applicant and respondents for the purchase of total number of 124 Trucks. As payment was not made, there arose a dispute between the parties. Accordingly, a sole Arbitrator Mr.K.S.Gowthaman was appointed on 31/3/2018. In the meanwhile, Memorandum of Understanding dated 13/4/2018 also was entered into between the parties, wherein the respondents acknowledged the liability and agreed

to pay the amount within one year. Arbitration Proceeding could not be completed, within the prescribed period, i.e., before 31/3/2019. Hence applicant sought for extension of time before this Court in A.No.3107 of 2019. This Court, by an order, dated 20/6/2019 extended a further period of three months time for completion of the arbitration proceedings. As there was applications filed to amend the claim statement, there was some delay before the Arbitrator. That apart, the respondents also sought time repeatedly. Therefore, Arbitrator could not complete the proceeding. Hence the present applications have been filed for extension of another three months.

3. It is the case of the respondents that before Arbitrator, proceedings were continued and in the absence and behind the back of the respondents, Arbitrator did not thought it proper and fit to issue further notice of proceedings to the respondents. Arbitrator gave 14 opportunities to file claim statement. The same is contrary to the mandate of Sections 23, 25 (a) and Section 29 A of the Arbitration Act, 1996. Such adjournments were granted without recording any reasons. In fact, arbitration proceeding is not commenced and no claim

statements were filed and arbitration proceedings were lapsed. By an order, dated 20/6/2019, this Court has extended the time by three months. It has been held that order was obtained by suppression of material facts. The claim application was filed by the applicant only on 31/7/2019 and his further contention is that notice under Section 21 of the Arbitration Act also not been issued. Therefore, the question of arbitration does not arise at all. If any arbitral award was made after the stipulated time, provided in Sections 29 A (1), (3) and (4) will be patently illegal. Therefore, prayed for dismissal of the applications.

4. Learned counsel appearing for the applicant submitted that on an earlier occasion, this Court has granted extension. At that point of time, there was no appearance on the side of the respondents. The claim applications have already filed. Only the respondents have dodged in filing counter. Therefore, his contention that having not objected for extension of time on an earlier occasion, now the respondents cannot challenge the earlier order in this proceeding. Further, the claim petitions have already filed and the proceeding cannot be challenged by the respondents on the ground of want of

notice under Section 21 of the Act and extension ought to be granted in the alternative.

5. Learned counsel appearing for the respondents submitted that without filing claim statements on an earlier occasion, extension was obtained by this Court. The conduct of the arbitrators contrary to the mandate of Sections 23, 25 (a) and Section 29 A of the Arbitration Act, 1996.

6. It is the contention that no notice was issued under Section 21 of the Arbitration Act, 1996. Without such notice, Arbitration proceedings that are commenced would be unsustainable in law. Reference to Arbitrator was made on 31/3/2018 and Memorandum of Understanding is dated 10/4/2018. Therefore, any subsequent notice issued by the Arbitrator has no relevance at all. It is the submission of the learned counsel that extension cannot be granted and hence the very proceeding itself not validate in the eye of law.

7. Perused the materials available on record. There is no dispute with regard to the agreement entered into between the parties.

Respondents availed financial assistance from the applicant. The contract agreements were entered into between the parties. Originally the applicant has sent notice on 31/3/2018 for reference. In pursuant to the above notice, sole Arbitrator Mr.K.S.Gowthaman was appointed. It is the main contention of the respondents that though the arbitrator was appointed on the date of application, there was no dispute between the parties as they entered into a Memorandum of Understanding dated 10/4/2018. Arbitration Proceeding could not be completed, within the prescribed period, i.e., before 31/3/2019. Hence applicant sought for extension of time before this Court in A.No.3107 of 2019. This Court, by an order, dated 20/6/2019 extended a further period of three months time for completion of the arbitration proceedings. As there was applications filed to amend the claim statement, there was some delay before the Arbitrator.

8. It also appears from the record that even after the appointment, Arbitration Proceeding could not be completed, within the prescribed period, i.e., before 31/3/2019. Hence applicant sought for extension of time before this Court in A.No.3107 of 2019. Vide, order

dated 20/6/2019, a further period of three months time for completion of the arbitration proceedings was granted. Considering the delay and long adjournment granted by the sole arbitrator for favouring the applicant in filing the claim statement, this Court is of the view that a mandate of the arbitrator cannot be extended. However, taking note of the fact that Memorandum of Understanding entered into between the parties on 13/10/2018, wherein the respondents have acknowledged the liability, this Court is of the considered view to appoint the Hon'ble Mr.Justice D. Murugesan, as an Arbitrator to enter upon the reference.

9. Accordingly,

(i). Mr.Justice D.Murugesan, High Court Judge (Retired), residing at No.11-A, M.D.Sitaraman Avenue, 7th Cross Street, V.G.P.Layout, Injambakkam, Chennai - 600 115, Contact No.8826253366, 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 respondents 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.

6. These Applications are accordingly, allowed, leaving the parties to bear their own costs.

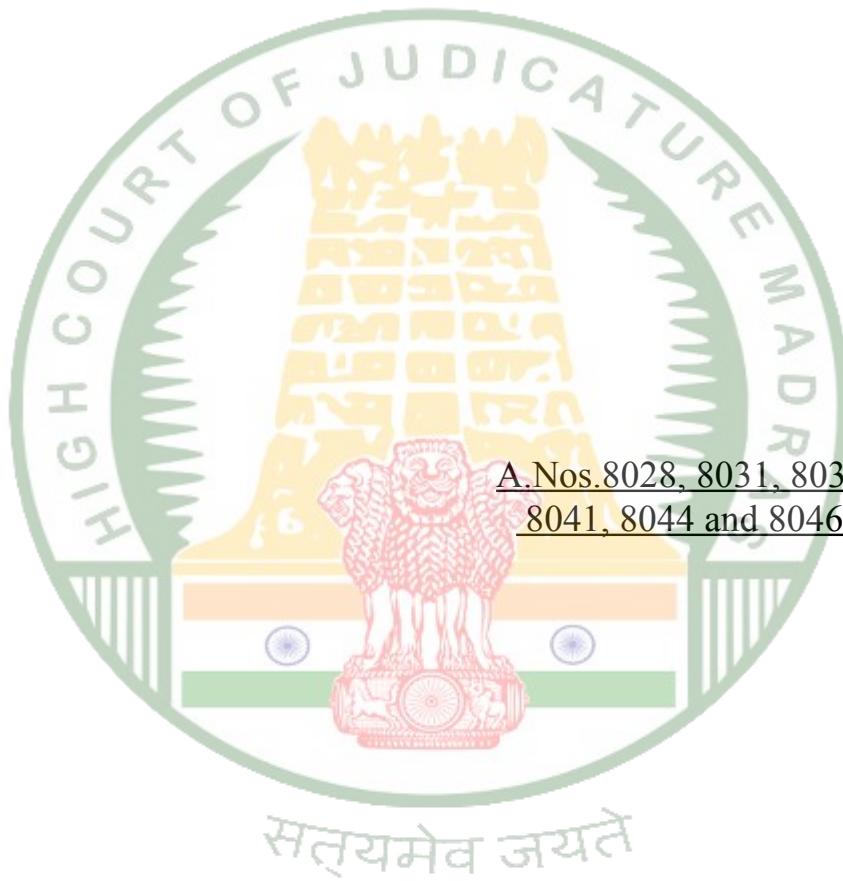
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mvs.

A.Nos.8028 of 2019, etc.

N.SATHISH KUMAR,J

mvs.



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8041, 8044 and 8046 of 2019

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