



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 13th DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.261 of 2021

and

O.A. No.92 of 2021

and

A.Nos.557 and 2233 of 2021

O.P.No.261 of 2021:-

In the matter of Arbitration and
Conciliation Act, 1996

and

In the matter of dispute between
M/s.Daimler Financial Services
India Private Limited -VS-
Emerald Luxury Cars LLP and
2 others arising out of MOU
dated 02.11.2020.

M/s Daimler Financial Services India
Private Limited,
Rep.by its Authorised Signatory
having its office inter alia at
1st Floor, Tower B-Tek Meadows,
No.51 Rajiv Gandhi Salai, Sholinganallur,
Chennai 600 119.

... Petitioner

-Versus-

1. M/s Emerald Luxury Cars LLP,
No.9, Shyam Vihar Bungalow, Shilaj Road,
Thaltej Ahmedabad 380 054, Gujarat.

2. Mr.Kanaiyo M.Thakkar,
Director M/s.Emerald Luxury Cars LLP
No.9, Shyam Vihar Bungalow, Shilaj Road,
Thaltej Ahmedabad 380 054 Gujarat.



3. Khushi Kanaiyo Thakkar,
Director M/s. Emerald Luxury Cars LLP
No.9, Shyam Vihar Bunglow Shilaj Road,
Thaltej Ahmedabad - 380 054 Gujarat.

(*) 4. M/s. Mercedes Benz India Pvt Limited,
E-3 MIDC Chakan,
Phase III, Chakan Industrial Area,
Kuruli Nighoje,
Taluka Khed, Pune 410 501.

(*) Fourth Respondent is impleaded as per order dated 13.08.2021 in
A.No.2233/2021.

: Respondents

Original Petition praying that this Hon'ble Court be pleased to
appoint a sole arbitrator to adjudicate and resolve the disputes through
arbitral proceedings between the parties.

O.A.No.92 of 2021 and A.No.557 of 2021:-

In the matter of Arbitration and
Conciliation Act, 1996

and

In the matter of dispute between
M/s. Daimler Financial Services
India Private Limited -VS-
Emerald Luxury Cars LLP and
2 others arising out of MOU
dated 02.11.2020.

M/s Daimler Financial Services India
Private Limited,
Rep. by its Authorised Signatory
having its office inter alia at
1st Floor, Tower B-Tek Meadows,
No.51 Rajiv Gandhi Salai, Sholinganallur,
Chennai 600 119.

... Applicant

-Versus-

1. M/s. Emerald Luxury Cars LLP,
No.9, Shyam Vihar Bunglow, Shilaj Road,
Thaltej Ahmedabad 380 054, Gujarat.



2. Mr.Kanaiyo M.Thakkar,
Director M/s.Emerald Luxury Cars LLP
No.9, Shyam Vihar Bunglow, Shilaj Road,
Thaltej Ahmedabad 380 054 Gujarat.

3. Khushi Kanaiyo Thakkar,
Director M/s.Emerald Luxury Cars LLP
No.9, Shyam Vihar Bunglow Shilaj Road,
Thaltej Ahmedabad - 380 054 Gujarat.

: 1st to 3rd Respondents/
Borrowers

4. Emerald Cars Pvt Ltd.,
CIN NO - U50102GJ2006PTC049383
508/15 NR, Mayur Chember, Old Kumkum
Party Plot, Opp Gandhigram Rly Station,
Ellisbridge, Ahmedabad GJ 380006 IN

5. Emerald Bikes Pvt Ltd.
CIN No - U50100GJ2009PTC058563
Solitaire, Opp Commissioner office, Shahibaug Road,
Shahibaug Ahmedabad GJ 380004 IN

6. Oceanic Vehicles Pvt Ltd.
CIN NO.U34300GJ2005PTC045779
508/1, "Tej Enclave", Nr. Mayur Chambers
Old Kumkum Party Plot, Opp Gandhigram Rly Station,
Ellisbridge, Ahmedabad GJ 380006 IN

... 4th to 6th Respondents/ Garnishee

O.A.No.92 of 2021:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the 2nd and the 3rd Respondents from alienating the below mentioned schedule I and II pending disposal of the arbitration proceedings.



Application praying that this Hon'ble Court be pleased to direct the

1st, 2nd and the 3rd Respondents to furnish security to the tune of Rs.29,88,33,139.53/- (Rupees Twenty Nine Crores Eighty Eight Lakhs Thirty Three Thousand One hundred and thirty nine and paise fifty three only), failing which attachment of the below mentioned schedule.

A.No.2233 of 2021:-

1. M/s Emerald Luxury Cars LLP,
No.9, Shyam Vihar Bungalow, Shilaj Road,
Thaltej Ahmedabad 380 054, Gujarat.

2. Kanaiyo M.Thakkar,
Director - M/s.Emerald Luxury Cars LLP
No.9, Shyam Vihar Bungalow, Shilaj Road,
Thaltej, Ahmedabad - 380 054 Gujarat.

3. Khushi Kanaiyo Thakkar,
Director - M/s.Emerald Luxury Cars LLP
No.9, Shyam Vihar Bungalow, Shilaj Road,
Thaltej, Ahmedabad - 380 054 Gujarat.

: Applicants/Respondents

-Versus-

1. M/s Daimler Financial Services India
Private Limited,
Rep.by its Authorised Signatory
Having its office inter alia at
1st Floor, Tower B-Tek Meadows,
No.51 Rajiv Gandhi Salai, Sholinganallur,
OMR, Chennai - 600 119.

... 1st Respondent/
Petitioner

2.M/s.Mercedes Benz India Pvt Limited,
E-3 MIDC Chakan, Phase III,
Chakan Industrial Area,
Kuruli & Nighoje, Taluka Khed,
Pune – 410 501.

... Proposed Respondent/



Third Party

Application praying that this Hon'ble Court be pleased to implead the proposed respondent as 4th Respondent in O.P.No.261 of 2021 and any future arbitration proceedings.

This original petition along with these applications having been heard on 06.08.2021 in the presence of Mr.P.H.Aravindh Pandian, Senior Counsel for M/s.S.Namasivayam, Advocates for the Petitioner in O.P.No.261 of 2021 and for the applicant in O.A.No.92 of 2021, and A.No.557 of 2021, and for the 1st respondent in A.No.2233 of 2021, and Mr.Sathish Parasaran, Senior Counsel for M/s Arva Merchant, Advocates for the respondents 1 to 3 in O.P.No.261 of 2021 and O.A.No.92 of 2021 and A.No.557 of 2021 and for the applicants in A.No.2233 of 2021 and Mr.M.S.Krishnan, Senior Counsel for Mr.K.Ashok Kumar, Advocates for the 4th respondent in O.P.No.261 of 2021 and for the 2nd respondent in A.No.2233 of 2021 and upon reading the order herein dated 02.07.2021 and 02.08.2021 and having been stood over for consideration till this date and coming on this day before this Court for orders in the presence of the said advocates for the parties hereto and, it is ordered as follows:-

That the Honourable Mr.Justice F.M. Ibrahim Kalifulla, Judge (Retired), Supreme Court of India, residing at Plot No.158-B, Door No.22, Sivananda Salai, Gill Nagar Extension, Choolaimedu, Chennai 600094.

(Mobile No.9444948928) be and is hereby appointed as Arbitrator to enter



upon reference and adjudicate the disputes *inter se* the parties.

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2. That the learned Arbitrator appointed herein shall, 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.

3. That the learned Arbitrator appointed herein shall be at liberty to fix his remuneration and other incidental expenses.

4. That the learned Arbitrator appointed herein shall hold proceedings at any place at his convenience and also the convenience of the parties.

5. That the order of interim injunction granted in pursuance of the order dated 18.02.2021 made in O.A.No. 92 of 2021 restraining the respondents 2 and 3 therein from alienating the properties more fully set out in the schedule thereunder shall continue till the Arbitral proceedings concluded.

6. That the A.No.557 of 2021 do stand closed.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
13th DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (O.S-II)

//Certified to be true copy//

Dated at Madras this the day of 2021.



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16.09.2021

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O.P.No.261 of 2021
and
O.A. No.92 of 2021
and
A.Nos.557 and 2233 of 2021

ORDER

DATED : 13.08.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 17.09.2021

APPROVED ON: 17.09.2021

Copy to:
The Honourable Mr.Justice
F.M. Ibrahim Kalifulla,
Judge (Retired),
Supreme Court of India,
residing at Plot No.158-B,
Door No.22, Sivananda Salai,
Gill Nagar Extension,
Choolaimedu, Chennai 600094.
(Mobile No.9444948928)

**THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on	Delivered on
06~08~2021	13-08~2021

CORAM:
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.261 of 2021,
O.A.No.92 of 2021 and
A.Nos.557and 2233 of 2021

M/s. Dalmier Financial Services India Pvt. Ltd.,
Rep.by its Authorised Signatory
having office inter alia at
1st Floor, Tower B - Tek Meadows,
No.51, Rajiv Gandhi Salai, Sholinganallur,
Chennai 600 119. .. Petitioner

.Vs.

1. M/s Emerald Luxury Cars LLP,
No.9, Shyam Vihar Bunglow, Shilaj Road,
Thaltej Ahmedabad – 380 054, Gujarat.
2. Mr. Kanaiyo M. thakkar
Director, M/s Emerald Luxury Cars LLP,
No.9, Shyam Vihar Bunglow, Shilaj Road,
Thaltej Ahmedabad – 380 054, Gujarat.
3. Khushi Kanaiyo Thakkar
Director, M/s Emerald Luxury Cars LLP,
No.9, Shyam Vihar Bunglow, Shilaj Road,
Thaltej Ahmedabad – 380 054, Gujarat. .. Respondents
4. M/s. Mercedes Benz India Pvt. Ltd.,
E-3, MIDC Chakan, Phase III
Chakan Industrial Area
Kuruli & Nighoje, Taluka Khed
Pune – 410501. .. Proposed
Respondent



Prayer: Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate and resolve the disputes through arbitral proceedings between the parties.

For Petitioner : Mr. P.H.Aravindh Pandian,
Senior Counsel for
Mr.S. Namasivayam

For Respondents : Mr. Sathish Parasaran
Senior Counsel for
M/s Arva Merchant

For Proposed
Respondent : Mr.M.S. Krishnan
Senior Counsel for
Mr.K. Ashok Kumar

COMMON ORDER

1. The following Petitions and Applications are taken up for final disposal in this Common Order:

1.a. **O.P.No.261 of 2021** has been filed to **appoint a sole Arbitrator** to adjudicate the disputes arose between the Petitioner and Respondents 1 to 3, as per the Clause contained in Memorandum of Understanding (MoU) dated 02.11.2020.

1.b. **O.A.No.92 of 2021** has been filed by the Petitioner for **Interim**

Injunction restraining the 2nd and 3rd Respondents from alienating the



Schedule I and II properties mentioned in the Judges Summons pending disposal of the Arbitration proceedings.

1.c. **A.No.557 of 2021** has been filed by the Petitioner for a direction to the Respondents 1 to 3 to **furnish security** to the tune of Rs.29,88,33,139.53.

1.d. **A.No.2233 of 2021** has been filed by the Respondents 1 to 3 to **implead M/s. Mercedes benz India Private Limited as 4th Respondent** in the Original Petition.

2. The Petitioner in O.P.No.261 of 2021 mainly proceeded to appoint a Sole Arbitrator on the ground that the Respondents 1 to 3 availed financial facilities for their business right from the year 2016 and executed Working Capital Facility Agreement, Wholesale Master Loan Agreement and Equipment Finance Facility Agreement on 27.12.2020. As the loan amount has been recalled, the Respondent brought another company viz., M/s. Garnet Motors for purchase of their assets. Hence, Memorandum of Understanding entered between the Petitioner, Respondents 1 to 3 and borrower M/s. Garnet Motors on 02.11.2020. As the dispute arose, the same has to be referred in view of the specific clause governed by the



parties to refer the dispute to the Arbitration. In nutshell, it is the contention of the Petitioner that all the loan agreement and Memorandum of Understanding entered into between the Respondents 1 to 3 and Petitioner are independent and separate, which is noway connected with the group company M/s. Mercedes Benz. Therefore, the M/s. Mercedes Benz is not a necessary party before this Court. The Respondents 1 to 3 took a stand that the Petitioner and the Mercedes Benz closely working together with the Respondents in fact they are inextricably linked to one another in their commercial dealings with the dealers. The Respondents entered with the dealership Agreement for sale of vehicles with Mercedes Benz on 16.08.2016 for a period of five years under various terms and conditions and they were Awarded as Dealer of the Year 2019 based on the encouragement shown by the Mercedes Benz and the Petitioner. It is the contention that the entire financial facilities were availed from the sister concern of Mercedes Benz as per their advise. As a result Agreement dated 27.12.2019 was entered.

3. The 1st Respondent was recognised as 'Dealer of the Year' for India in 2019. Thereafter, in view of the lock down from 15.03.2020 which continue till May 2020, the sales of the 1st Respondent in both the showrooms at Ahmedabad and Surat and the work at service stations came



to a grinding halt. However the Respondent had to spend recurring fixed expenses. That time Mercedes Benz has demanded the Respondent to provide accounting and proof of the vehicles available as sold to it. Meanwhile the Petitioner on 9.7.2020 recalled the entire loan facility provided to the 1st Respondent. The loan amounts recalled under various heads amounted to Rs.64,08,06,264.

4. It is the contention of the Respondents that the loans were payable over a period of several years whereas it were demanded to be repaid within a period of 7 days from the date of notice. Thereafter, the Mercedes Benz went on to direct the Respondent not to take fresh booking for cars. It is the further contention that only at the instance of Mercedes Benz the Respondents were forced to enter into the Memorandum of Understanding. The Memorandum of Understanding entered into between the Petitioner and the Garnet Motors on 02.11.2020. Prior to the Memorandum, there were several rounds of discussions and meetings, where Mercedes Benz is also a party, particularly the meeting held on 14.10.2020 and 23.10.2020. Hence, it is the contention that the Memorandum dated 2.11.2020 as a result of economic duress caused by the Petitioner and the Mercedes Benz. After entering into the Memorandum the money paid by the Garnet Motors was collected by the Benz directly. Such direct payment is caused loss to the



Petitioner to the tune of Rs.5,37,00,000/-. Hence, the Respondents filed a suit before the Commercial City Civil Court in Ahmedabad for various reliefs as against the Petitioner as well as Mercedes Benz and also claimed damages.

5. Therefore, it is the contention of Mr.Sathish Parasaran, learned Senior Counsel appearing for the Respondents 1 to 3 that Mercedes Benz is the necessary party wherein entire dispute revolve around dealership agreement entered between the Mercedes Benz and the Respondents herein. In all other loan agreements are pursuant to the dealership agreement and Mercedes Benz is the group companies they had to be impleaded. Admittedly, in the Civil Suit filed before the Ahmedabad Court, Mercedes Benz admitted that the entire dispute revolves around the dealership agreement which is the main agreement entered between the Respondents 1 to 3 and Mercedes Benz and even before the MoU there were negotiations in which Mercedes Benz was participated. Therefore, merely because in the Memorandum, Mercedes Benz is non-signatory that cannot be a ground to exclude them as a party in the Arbitral Proceedings. Hence, it is his contention that having taken defence in the civil suit that there is a dispute pertaining to the parties in respect of the dealership agreement and if the



reference for Arbitration, there will be a conflict of decision one before the Civil Court and another before the Arbitral Tribunal. Hence, it is his contention that either matter should be referred to the Arbitrator or to the Civil Court by making Mercedes Benz as party to the proceedings for effective adjudication between the parties.

6. Mr.P.H. Aravind Pandian, learned Counsel appearing for the Petitioner vehemently contended that the entire agreement executed in respect of loan by the Respondents 1 to 3 is different transaction altogether and the Memorandum dated 2.11.2020 is also independent agreement entered between the Applicant and Respondents 1 to 3 and one Garnet Motors to whom the assets of the Respondents 1 to 3 were sold. It is his contention that dispute arose only in respect of Memorandum dated 02.11.2020. Therefore, it is his contention that all other main contract namely the dealership agreement which is no way connected with the facilities extended by the Applicant Company, which cannot be clubbed with the Arbitral proceedings. At any event it is his contention that if at all the Respondents want to implead the Mercedes Benz, the same can be done before the Arbitral Proceedings. Let the Arbitral Tribunal to decide under its own jurisdiction. Whether the Mercedes Benz is necessary party before the Arbitral Tribunal cannot be decided in this application. Hence prayed



for dismissal of the application and prayed to appoint a Sole Arbitrator as per the terms agreed upon between the parties.

7. Mr.M.S. Krishnan Learned Senior Counsel appearing for the proposed 4th Respondent Mercedes Benz submitted that dealership agreement is independent contract between the Mercedes Benz and Respondents 1 to 3 for sale and purchase of the car manufactures by the Mercedes Benz. Whereas the applicant company herein is extending financial facilities, the Respondents 1 to 3 are availed such facility from the year right from the year 2016 and several agreements were entered between them. As there was a due in repayment of loan, loan was recalled. Separate Memorandum was executed on 02.11.2020 after the sale of assets of Respondents 1 to 3 to one Garnet Motors and some of the amounts also paid towards Applicant. The dispute is with regard to the remaining amount and dispute is raised in pursuance to the Memorandum dated 02.11.2020. Such being the position, Mercedes Benz is not necessary before the Arbitral Proceedings. If at all any dispute arose between the Respondent and Mercedes Benz, Respondent work out their remedy in the the Civil Suit already filed before the Commercial Court of Ahmedabad. The further contention of the learned Counsel is that as per the dealership agreement the



contention that the proposed party Mercedes Benz is not at all necessary party before this Court and the dispute between the applicant and the Respondent is based on the separate individual contracts entered into between them, where the proposed party namely Mercedes Benz is not a signatory. Hence, submitted that Mercedes Benz cannot be impleaded in this Petition. They cannot be compelled to participate in the Arbitral Proceedings.

8. In the light of the above submissions and the materials perused, as indicated, Petition has been filed to appoint an Arbitrator on the basis of the Memorandum of Understanding dated 02.11.2020. Clause 6 of the Memorandum of Understanding was pressed into service to refer the matter for Arbitration. No doubt, Clause 6 of the MoU indicate that a sole Arbitrator to be appointed by the Petitioner and the Courts in Chennai shall have exclusive jurisdiction. Prior to such Memorandum of Understanding, there were many other loan agreements also entered between the parties on 11.04.2016, 29.11.2018, 27.12.2019 and 28.07.2020 etc., The Working Capital Facility Agreement dated 27.12.2019 provides for seat of Arbitration at Chennai. Similarly, Wholesale Master Loan Agreement dated 27.12.2019 the seat of Arbitration is also fixed at Chennai and Equipment



agreed at Chennai. Deed of Hypothecation dated 27.12.2019 and Personal Guarantee of 2nd and 3rd Respondents, the seat of Arbitration stated to be at Mumbai. Similarly the Master Loan Agreement of the year 2018 provides for Arbitration seat at Chennai and another Hypothecation Deed dated on May 2018 provides Arbitration seat at Mumbai. Similarly, another Memorandum originally entered on 04.08.2020, the seat of Arbitration provides at Mumbai. There are several agreements have been entered between the parties. What was sought to be relied upon by the applicant in this application is Memorandum of Understanding dated 02.11.2020.

9. Whereas it is the main contention of the Respondents is that the applicant namely, Dalmier Financial Services Limited and Mercedes Benz are the companies are part of the Dalmier Group AG Germany is a group companies of Germany. The entire dispute revolve around the dealership agreement entered between the Mercedes Benz and the Respondents dated 16.08.2016 and as per the Dealership agreement only at the advice of the Mercedes Benz, the facilities were extended by the sister concern namely the applicant herein from 2016. It is his contention that when the loans was to be paid within a span of several years, due to lock down, the loan was suddenly recalled at the instance of the Mercedes Benz which caused economic duress and such a situation they were forced to enter into



Memorandum of Understanding dated 02.11.2020, forcing them to sell assets to another company namely Garnet Motors which is also a dealer of the Mercedes Benz. Before the lock down the Applicant/1st Respondent was declared as Best Dealer of the year 2019. Suddenly due to the lock down, by the act of the Petitioner and proposed Respondent Mercedes Benz, they created an economic duress and got Memorandum.

10. It is to be noted that while dealing with the application filed under Section 11 of the Arbitration and Conciliation Act 1996 the limited scope of the Court is to see the existence and validity of the contract between the parties. Admittedly, memorandum of Understanding dated 02.11.2020 which was pressed into service for reference was not signed by the Mercedes Benz. However, it is not in dispute that the Applicant and Mercedes Benz are group companies. Now the position of law is that even when a non signatory to an agreement can be impleaded and subject to the Arbitration Proceedings by invoking the doctrine of group of companies. When circumstances indicate that non signatory of company is also relevant for resolution entire dispute as held in ***Chloro Controls India Private Limited vs. Severn Trent Water Purification Inc. and Ors. [(2013) 1 SCC 641]*** The same view has been reiterated in ***Cheran Properties Limited vs.***



judgment in para 23 the Apex Court has held as follows:

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“23. As the law has evolved, it has recognised that modern business transactions are often effectuated through multiple layers and agreements. There may be transactions within a group of companies. The circumstances in which they have entered into them may reflect an intention to bind both signatory and non-signatory entities within the same group. In holding a non-signatory bound by an arbitration agreement, the court approaches the matter by attributing to the transactions a meaning consistent with the business sense which was intended to be ascribed to them. Therefore, factors such as the relationship of a non-signatory to a party which is a signatory to the agreement, the commonality of subject-matter and the composite nature of the transaction weigh in the balance. The group of companies doctrine is essentially intended to facilitate the fulfilment of a mutually held intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non-signatories. The effort is to find the true essence of the business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory.”

11. This Court has to find out the circumstances reflect an intention to

bind both signatory and non-signatory entities within the same group. It is



not in dispute that the dealership agreement dated 16.08.2016 was entered into between the parties namely Mercedes Benz and Respondents 1 to 3.

Clause 1.4 of the Dealership Agreement reads as follows:

“1.4. Related Activities:

(1) With respect to financing and leasing, DEALER shall, albeit not exclusively, offer the range of services provided by the COMPANY, Daimier or Daimier Group Company active in the filed of financing or leasing.”

12. Though not exclusive clause incorporated in the above clauses, the further clauses in the dealership agreement particularly, in Clause 9.2 with regard to Indemnification indicate that Mercedes Benz required the dealer namely, Respondents 1 to 3 to indemnify and keep Daimler company and Clause 9.3 deals with Product Liability required dealer comply with the rules and procedures as amended by the company Daimler from time to time. Similarly, Clause 15.3 deals with Assignment wherein also the right of assignment to his own company Daimler the Group of Company retained by the dealer and Confidential Information clause is also required the dealer to be maintained in respect of the Group of Companies. Therefore, though a non exclusive clause mentioned in the Dealership Agreement in respect of



makes it very clear that the Applicant company and Mercedes Benz were operating together of course one is in respect of sale of cars and other is in respect of extending financial facility.

13. Be that as it may. It is the specific stand of the Respondents 1 to 3 that they were pushed into such a situation only during the lock down period and due to economic duress they were forced to enter such contracts which are voidable. Therefore, they have challenged the same before the Commercial Court, Ahmedabad, making the applicant as well as the proposed parties Mercedes Benz and others as party defendants. It is relevant to note that the in above suit similar allegations have been made and relief has been sought to declare documents executed by the Respondent is null and void and to declaration sought declaring the hypothecation agreement, master loan agreement, guarantee deed and Assets sale agreement and also sought decree against the Mercedes Benz. In the above suit, the proposed party Mercedes Benz filed an application under Order 7 Rule 10 of CPC for Return of the Plaint filed by the Plaintiff on the ground of want of jurisdiction. According to them as per the Dealership Agreement courts in Pune alone have jurisdiction to decide the matter. In paragraphs 3 and 4 of the above application, it is pleaded as follows:



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“3. That from the aforesaid averments in the Complaint, it is abundantly clear that the fulcrum of the entire dispute in the present case revolves around the dealership business of the Plaintiff/s, which in turn, emanates out of and is squarely covered by the dealership Agreement dated 16.08.2016, entered into between the Plaintiff No.1 and the Defendant No.1. All the other events/agreements that have been referred to, in the Complaint admittedly, are in pursuance to and are merely incidental to the Parent Agreement, i.e., the Dealership Agreement dated 16.08.2016.

4. That the present suit is essentially in relation to the Dealership Business of the Plaintiffs, of buying and selling the “contract goods” of the Defendant No.1, as defined in the Dealership Agreement dated 16.08.2016. The other two agreements, ie., the Master Loan Agreement and the Deed of Hypothecation, both dated 17.5.2018, were contemplated for purchase of vehicles by the Plaintiff from the Defendant No.1 under the Dealership Agreement, against the sale of which the loans were to be repaid by the Plaintiff/s.”

14. Above pleadings makes it very clear that the Mercedes Benz admitted that all other events and agreements that have been referred to in the complaint admittedly, are in pursuance to and are merely incidental to the Parent Agreement, i.e., the Dealership Agreement dated 16.08.2016. The



suit itself filed questioning the hypothecation, loan agreement and other agreements entered in favour of the Applicant herein. Therefore, the group of company though non-signatory in the subsequent MoU dated 02.11.2020, they categorically admitted that all other agreements are in pursuance to dealership agreement dated 16.08.2016. It is also relevant to note that prior to entering MoU dated 02.11.2020 there was negotiations among the parties in which the proposed parties also participated and minutes have been recorded on 23.10.2020 which has been found in page No.217 of typed set of documents. On final process on 23.10.2020, wherein the Respondents and Mercedes Benz and Applicant herein and another company by name Garnet Motors were participated in the meeting and Minutes have been recorded for selling the Assets of the Respondents 1 to 3 to M/s. Garnet Motors. Therefore, prior to MoU dated 02.11.2020 Group Companies also negotiated the issue which resulted in the Memorandum coming into existence. Therefore, merely because the proposed parties are not signatory in the MoU, it cannot be said that they are not bound by the entire dispute which is emanated on the basis of the Dealership Agreement.

15. The judgment relied upon by the Respondent reported in **(2019) 7**

SCC 62 [Reckitt Benckiser (India) Pvt. Ltd., vs. Reynders Label Printing

<https://hcservices.ecourts.gov.in/hcservices/>

India Pvt. Ltd., and others] the Apex Court taking note of the fact that the



proposed party was neither the signatory to the arbitration agreement nor did have any casual connection with the process of negotiations preceding the agreement or the execution thereof, whatsoever and held that the proposed party cannot be impleaded. In the above case the Apex Court dismissed the application as against the proposed to be impleaded party. Whereas in this case, even prior to entering into MoU there were negotiations between the parties including the proposed party herein. Besides in the civil suit their categorical stand that all other contracts which entered with the applicant herein are merely incidental to the main contract viz., Dealership Agreement. Even in the counter filed before this Court by the proposed party in para 3(xii) it is specifically admitted by the proposed party that the Respondents 1 to 3 have raised the same grounds before the Commercial Courts in Ahmedabad and are raising the same grievance before this Court. In para 3(xix) it is stated that if the dealership agreement is the parent agreement and all other agreements are incidental thereto, then all the disputes should be raised before the Courts at Pune. Taking note of the above stand of the proposed party and the participation from the very beginning and the stand of the proposed party before the Civil Court as indicated above that all Master Loan Agreement and Hypothecation itself are incidental to the Dealership Agreement of the year



non-signatories. When the dispute raised in commercial suit and raised in the Arbitration proceedings are interlinked. To avoid conflict of decision by two forums it has to be referred to either to Civil Court or to the Sole Arbitrator. In all fairness the proposed party should participate in the proceedings since according to them the entire dispute revolve around the dealership agreement. When the serious allegations, viz., economic duress and other allegations of coercion is raised against them, they should in all fairness participate in the proceedings. Though this court is not in making any roving enquiry as to the allegations at this stage to meet out such allegations the Proposed Party viz., Mercedes Benz certainly in all fairness should participate in the proceedings. Though the Civil Court has ceased of the matter, it is stated by the Applicant herein that they have filed Section 8 Application before the Civil Court. The Respondents 1 to 3 have submitted that they have no objection even for referring the entire dispute to the Arbitration by this Court. They are ready to raise all the claims before the Arbitrator.

16. In *State of Karnataka vs. Sir Janakusa Jeevansa Bakale and Another [(1999) 5 Supreme Court Cases 650]* the Honourable Apex Court has held as follows:



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disputes and differences in connection with the main agreement and also disputes in regard to “other matters” “connected” with the subject-matter of the main agreement then in such a situation, in our view, were are governed by the general arbitration clause 39 of the main agreement under which disputes under the main agreement and disputes connected therewith can be referred to the same arbitral tribunal.
...”

17. Whereas it is the contention of the Mercedes Benz that since Dealership Agreement provides jurisdiction before the Pune Court, they cannot be forced Arbitration. It is to be noted that the group companies relied upon so many loan agreements, viz., Working Capital Facility Agreement, Wholesale Master Loan Agreement, Equipment Finance Agreement, etc., from the year 2016, 2018 and 2019. Seat of Arbitration fixed at Chennai. Whereas in the Deed of Hypothecation, personal guarantee the seat has fixed at Mumbai. That itself clearly indicate that as far as the working capital is concerned any dispute, the parties are clear to refer the matter to the Arbitration at Chennai. Such being the position, the dispute appears to the result of working capital facility which highly connected with the dealership agreement. Subsequent agreement governing



is the contention of the Mercedes Benz that they prepared to go for Arbitration or Civil Suit but only at Pune. This Court is of the view that such contention cannot be countenanced, since the parties have now particularly, the applicant is the Group Company of the Proposed Party prefer to go for Arbitration at Chennai, mere technicality will not stand in the way. The clauses in the agreement, particularly with regard to the conferring jurisdiction at Pune Courts need not be given much importance at this stage, since the overall dispute has to be resolved one way or other. The main dispute, according to the applicant, seems to be with regard to the loan agreement. When the group companies chosen particular venue for Arbitration, no prejudice would be caused to the another group of companies participating in the same arbitral proceedings to meet out allegations raised against them in the Civil Suit.

18. In such a view of the matter this Court is of the view that the proposed party viz., Mercedes Benz is necessary to be brought on record. Accordingly **Impleading Petition is allowed.**

19. As both sides, particularly Respondents 1 to 3 have no serious objection for appointment of Arbitrator, this Court taking note of the allegations raised as against each other, appoints the Honourable Mr. Justice



F.M. Ibrahim Kalifulla,(Retired), Supreme Court of India, residing at Plot No.158-B, Door No.22, Sivananda Salai, Gill Nagar Extension, Choolaimedu, Chennai 600094. (Mobile No.9444948928) as Arbitrator, to enter upon reference and adjudicate the disputes *inter se* the parties.

i) 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.

ii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses.

iii) The learned Arbitrator can hold proceedings at any place at his convenience and also the convenience of the parties.

Accordingly, **Petition to appoint an Arbitrator is allowed.**

20. As there is no arguments advanced as against the interim order passed by this Court in Section 9 of the Arbitration and Conciliation Act



extended so far, shall continue till the Arbitral Proceedings concluded.

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21. In view of the above, the Application filed to furnish security is closed.

22. In the result,

1. O.P.No.261 of 2021 to appoint an Arbitrator is allowed.

2. A.No.2233 of 2021 to implead the proposed Respondent as 4th Respondent in O.P.No.261 of 2021 is allowed.

3. Interim Order granted in O.A.No.92 of 2021 on 18.02.2021 shall continue till the Arbitral Proceedings.

4. A.No.557 of 2021 filed to furnish security is closed.

Sd./-N.S.K.J
13.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)