



Arb.O.P(Com.Div) No.291 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2022

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

Arb.O.P(Com.Div) No.291 of 2022

Ford India Private Limited,
Represented herein by its Authorised Representative
Having its registered office at:
S.P.Koil Post, Chengalpattu
Kancheepuram-603 204
Tamil Nadu
And its corporate office at:
Plot No.142 Chimes
5th Floor, Sector 44
Gurgaon-122 003, Haryana.

... Petitioner

Vs.

M/s.Libra Cars Private Limited,
Represented by its Managing Director,
Having its office at:
Shop No.2 Kh.No.53/26
Alipur Old GT Road,
Village Bakoli, Delhi-110 036.

... Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to (a) appoint a sole Arbitrator adjudicate the disputes between the parties, (b) direct the respondent to pay the costs for the present petition to the petitioner and (c) grant such other or further relief(s) in favour of the petitioner which this Hon'ble High Court may deem fit and proper.



Arb.O.P(Com.Div) No.291 of 2022

For Petitioner : Mr.J.R.Jayant
along with Mr.Vijay R.Sekar

For Respondent : No Appearance

ORDER

Read this in conjunction with and in continuation of earlier proceedings made in the first listing of this 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of brevity] on 06.07.2022, which reads as follows:

'Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 23.06.2022 under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] inter alia with a prayer for appointment of a sole Arbitrator.

2. Mr.J.R.Jayant, learned counsel on record for the petitioner who is before this Court submits that the captioned Arb OP is predicated on clause 14(b)(2)(a) in an agreement between the petitioner and respondent dated 01.02.2013 and captioned 'Dealer Sales and Services Agreement'. To be noted, this agreement dated 01.02.2013 shall hereinafter be referred to as 'primary contract' and/or 'DSSA' for the sake of convenience and clarity.

3. Aforementioned clause 14(b)(2)(a) of primary contract reads as follows:



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'14. DISPUTE RESOLUTION PROCESS

(a)

(b)

(1)

(2) (a) *It is agreed that any dispute relating to or arising from this Agreement shall be referred to Arbitration to a sole Arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996.'*

4. Adverting to the aforementioned clause, learned counsel submits that the aforementioned clause serves as Arbitration Agreement between the parties i.e., Arbitration Agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. Learned counsel submits that clause 14 of primary contract / DSSA captioned 'Dispute Resolution Process' under sub-clause (1) provides for conciliation. A notice was issued but that did not fructify and that carried the parties to clause 14(b)(2)(a) i.e., Arbitration is his say. It is further submitted by learned counsel that qua arbitration, a trigger notice dated 17.09.2021 was issued to respondent proposing three names and seeking the consent of respondent. The respondent, sent a reply notice dated 22.09.2021 inter alia contending that the primary contract / DSSA, has been superseded by a subsequent agreement dated 24.04.2018 and therefore the invocation of arbitration clause in DSSA is untenable. Learned counsel submits that the petitioner sent a rejoinder dated 21.10.2021 to the aforementioned reply inter alia reiterating its original position. Learned counsel reiterates the original position in the hearing and says that the captioned Arb OP is



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predicated on clause 14(b)(2)(a) of DSSA. This submission is recorded.

5. Learned counsel submits that primary contract i.e., DSSA was terminated by the petitioner in and by a notice dated 05.03.2019 inter alia on the allegation that the respondent has reneged qua commitments vide primary contract and was not willing to plough in further capital for improvement of the business. It is not necessary to either dilate or express any opinion on this as this is a Section 11 legal drill.

6. In the light of the narrative thus far, prima facie case made out for issue of notice.

7. Issue notice to respondent returnable in three weeks i.e., returnable by 27.07.2022. Private notice permitted.

8. List on 27.07.2022.'

2. Today Mr.J.R.Jayant, counsel on record for petitioner along with Mr.Vijay R.Sekar is before this Commercial Division.

3. Aforementioned 06.07.2022 proceedings shall be read as an integral part and parcel of this order. This means that abbreviations and short forms used in 06.07.2022 proceedings shall continue to be used in the instant order also.

4. To be noted, in and by 06.07.2022 proceedings, this Commercial Division issued notice to respondent, notice has been duly served on the



Arb.O.P(Com.Div) No.291 of 2022

respondent but the respondent has not chosen to come before this Commercial Division. This Commercial Division is informed that the respondent has not chosen to enter appearance through any counsel. Name of the respondent called out aloud thrice. No response. As the statutory perimeter within which a legal drill under Section 11 of A and C Act should perambulate is very limited, more so owing to sub-section (6A) thereat, it is not necessary to be detained by facts as it is not necessary to either delve or dilate qua facts. It will suffice to say that 06.07.2022 proceedings capture the crux and gravamen of the matter in a nutshell.

5. In the light of sub-section (6A) of Section 11 of A and C Act, the scope of a legal drill under Section 11 is largely confined to the examination of the existence of an arbitration agreement. This principle has been laid down by Hon'ble Supreme Court in oft quoted **Mayavati Trading** case i.e., **Mayavati Trading Pvt. Ltd vs Pradyut Deb Burman** reported in (2019) 8 SCC 714, relevant paragraph is paragraph 10 and the same reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in



Arb.O.P(Com.Div) No.291 of 2022

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the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.

(underlining made by this Court to supply emphasis and highlight)

6. In the case on hand, arbitration agreement being arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is in the form of a Clause in the primary contract i.e., DSSA, which is Clause 14 and sub-clauses thereat also make it clear that the venue is 'Chennai'.

7. Arbitrable dispute has also been briefly captured in 06.07.2022 proceedings and therefore, it is not necessary to dilate on the same.

8. This Commercial Division appoints Mr.Adith Narayan Vijayaraghavan, Advocate with address for service at No.17, Lakshmi Street, Alagappa Nagar, Kilpauk, Chennai-600 010, Mobile:91760 65829 email:adith@anvchambers.com as sole Arbitrator. Learned sole Arbitrator is requested to enter upon reference qua aforementioned dispute, adjudicate upon the same and make an award by holding sittings at 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court'



Arb.O.P(Com.Div) No.291 of 2022

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('MHCAC') in accordance with Madras High Court Arbitration Proceedings Rules 2017, fee of the learned Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

9. Captioned Arb OP ordered on above terms. There shall be no order as to costs.

21.11.2022

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Note: The Registry is directed to communicate this order forthwith

To

1. Mr.Adith Narayan Vijayaraghavan,
Advocate, No.17, Lakshmi Street,
Alagappa Nagar, Kilpauk,
Chennai-600 010.
Mobile: 91760 65829.
2. The Director,
Tamil Nadu Mediation and Conciliation Centre
-cum- Ex-Officio Member,
Madras High Court Arbitration Centre,
Chennai - 104.



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Arb.O.P(Com.Div) No.291 of 2022

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Arb.O.P(Com.Div) No.291 of 2022

21.11.2022