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Arb.O.P (Com.Div) No.216 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

Arb.O.P (Com.Div) No.216 of 2021

M/s.Ashok Leyland Ltd.,
No.1, Sardar Patel Road, Guindy
Chennai – 600 032

... Petitioner

Vs.

M/s.Deo Chandra Singh Motors Private Limited
Flat No.422, 2nd Floor, Sangam Apartment
Ashiana Nagar, Phase II
Patna – 800 025, Bihar
Respondent

...

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to hear and decide the Arbitral dispute between the Petitioner and the Respondent, arising out of the Vehicle Dealer Agreement/Arbitration Agreement dated 10.09.2020 and to direct the respondent to pay costs.

For Petitioner : Mr.Praveen S Kumar
of M/s.Rank Associates (Law Firm)



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Arb.O.P (Com.Div) No.216 of 2021

For Respondent : Mr.C.Thiagarajan

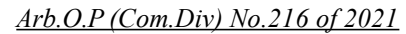
ORDER

Captioned 'Arbitration Original Petition' ['Arb.O.P' for the sake of convenience] has been presented in this Court on 22.09.2021 under Section 11(6) of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, convenience and clarity with a prayer for appointment of a sole Arbitrator.

2. Mr.Praveen S Kumaar of M/s.Rank Associates (Law Firm) for the petitioner and Mr.C.Thiagarajan, learned counsel for the lone respondent are before this Court.

3. Respondent has filed a counter affidavit and completed pleadings.

4. Learned counsel for petitioner submits that the nucleus of the captioned Arb.O.P is an 'agreement which goes by the caption 'VEHICLE DEALER AGREEMENT' dated 10.09.2020' between the petitioner and the respondent companies [hereinafter 'said agreement' for the sake of convenience and clarity]. This Court is informed that said agreement is one whereby the petitioner company appointed respondent company as



'4. Disputes have arisen between the Petitioner and the Respondent, which are arbitrable under the aforesaid Arbitration Agreement. The brief facts leading to the present Petition are as follows:-

b. In the normal course of business the Respondent was appointed as a Dealer of the Petitioner Company in the year 2011. Thereafter the Dealership Agreement has periodically been renewed. The last of the agreement was the Vehicle Dealer Agreement dated 10.09.2020, where the Respondent was appointed as a Dealer of the Petitioner for the territory/s, mentioned in the said Agreement. Both parties are governed by the terms of the said Agreement. The above said agreement expired on 31.03.2021 and it was not renewed thereafter. The Respondent has also not made



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any request for renewing the Agreement. '

5. Learned counsel for petitioner submits that Clauses 40 and 37 of said agreement captioned 'ARBITRATION' and 'LAW OF AGREEMENT' respectively constitute the arbitration agreement between the petitioner and respondent companies i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. To be noted, clauses 40 and 37 of said agreement read as follows:

'40. ARBITRATION

40.1 In the event of differences/disputes the parties will resolve the same by mutual negotiations. Any unresolved disputes shall be referred for arbitration under Indian Arbitration & Conciliation Act, 1996 to a suitably appointed arbitrator under mutual consent. The decision of the arbitrator will be final and binding on both parties and the venue of such arbitration shall be in Chennai. The language shall be English.

40.2 The parties subject to this agreement shall subject themselves to the exclusive jurisdiction of Courts in Chennai alone.'

'37. LAW OF AGREEMENT

This agreement shall be construed as having been executed in Chennai and it is agreed that the rights and liabilities of the parties herein, their heirs, executors, administrators, legal representatives, successors and assigns, in case a dispute arises shall be referred to the courts at Chennai



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Arb.O.P (Com.Div) No.216 of 2021

and shall be construed according to the law for the time being in force in Chennai and it is further agreed that in any event, service of any process shall be effective against AL only if made at the Registered Office of AL at Chennai.'

6. There is no disputation or disagreement about the existence of the aforementioned clauses 40 and 37.

7. Be that as it may, learned counsel for petitioner, elaborating his submissions further submitted that disputes erupted between the petitioner and respondent companies and those disputes essentially turn on C forms qua Commercial Tax for spare parts for certain financial years and penalty. The burden of the song qua petitioner is, the respondent has not produced C Forms impacting stamp duty and penalty payable qua C forms. To be noted, there is also a claim for damages. The petitioner issued a notice dated 23.12.2020 in this regard but it did not evoke any reply and therefore, the aforementioned arbitration agreement between the parties was invoked in and by a notice dated 21.07.2021, is learned petitioner counsel's further say.

8. The aforementioned arbitration invocation notice was sent by electronic mail also to the respondent/noticee and receipt of the electronic mail is not disputed.



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9. Resisting the captioned Arb. O.P, learned counsel for respondent made two submissions and they are as follows:

a) A part of the claim made by the petitioner is barred by limitation;

b) The claim may not really qualify as a arbitrable dispute qua said agreement as it pertains to financial years prior to the period of said agreement.

10. In response to the above submissions, learned counsel for petitioner reiterated the pleadings in sub-paragraph (b) of Paragraph 4 of the petition which has been extracted and reproduced supra. Learned counsel for petitioner submitted that it is a continuous business relationship between the petitioner and respondent companies which commenced way back in 2011.

11. In support of the relevant plea, learned counsel pressed into service judgment of Hon'ble Supreme Court in ***Geo Miller and Co. Pvt. Ltd., Vs. Chairman Rajasthan Vidyut Utpadan Nigam Ltd.***, reported in ***2019 SCC online 1137***.

12. This Court carefully considered the rival submissions.



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13. At the outset, a careful perusal of **Geo Miller** case law will bring to light that it is an authority for the proposition that it is well open to a Court to test whether an application under Section 11 of A and C Act has been presented within the prescribed period of limitation. In other words, it is an authority for the proposition qua limitation regarding Section 11 and not as to whether the arbitrable dispute is stale or not. In this regard, this Court reminds itself of the oft-quoted celebrated judgment **Padma Sundara Rao Vs. State of Tamil Nadu** case law reported in (2002) 3 **SCC 533** wherein a Constitution Bench of Hon'ble Supreme Court held as follows:

'9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537'

14. In the above view of the matter, **Geo Miller** case does not help the respondent in the case on hand as it is nobody's case that the captioned



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Arb.O.P has not been presented in this Court within the prescribed period of limitation.

15. This takes us to the next question which turns on some of the claims being stale. This turns on facts as learned counsel for petitioner, based on the pleadings, more particularly Paragraph 4(b) submits that this is a continuing business relationship between the petitioner and respondent companies. This is clearly a mixed question of facts and law, which can be gone into only by the Arbitral Tribunal (AT). The scope of a legal drill under Section 11 has been set out by Hon'ble Supreme Court in ***Mayavati Trading Private Limited Vs. Pradyut Deb Burman*** reported in (2019) 8 SCC 714. ***Mayavati Trading*** is a case where the scope of a Section 11 legal drill came up for consideration in the light of sub-section (6A) of Section 11 of A and C Act. The most relevant observation was made by Hon'ble Supreme Court in Paragraph 10 of ***Mayavati Trading***, which 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



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Arb.O.P (Com.Div) No.216 of 2021

overruled. This being the position, it is difficult to agree with the reasoning contained in 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)

16. As already alluded to and captured supra, as far as the case on hand is concerned, there is no dispute or disagreement about clauses 40 and 37 of said agreement.

17. As there is no dispute or disagreement about existence of arbitration agreement, this Court considers it appropriate to accede to the prayer for appointment of a sole arbitrator making it clear that the issue raised by the respondent regarding a part of the claim being stale/hit by limitation is left open to be raised before the AT so that the AT can decide the same on its own merits and in accordance with law.

18. In the light of the narrative thus far, this Court deems it appropriate to appoint Mr.Arun Karthik Mohan, Advocate, having office



Arb.O.P (Com.Div) No.216 of 2021

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at No.7, Jagadambal Colony, 2nd Street, Royapettah, Chennai - 600 014 (Mob: 8754463801] as sole Arbitrator. Mr.Arun Karthik Mohan, who was present in Court very fairly brought to the notice of this Court that he has given legal advice to the petitioner company with regard to some Joint Venture Agreement in the past. To be noted, this Court is informed that it has nothing to do with the case on hand. Serial 2 of the SEVENTH SCHEDULE of A and C Act only talks about cases where an Arbitrator currently represents or advises a party or one of its affiliates. This is not the case in captioned Arb.OP as it is clearly in the past and it is in some other matter. In this regard, it is deemed pertinent to record that the aforementioned two counsel i.e., Mr.Praveen S.Kumaar, for petitioner and Mr.C.Thiagarajan for respondent submit that they have no objection regarding Mr.Arun Karthik Mohan being appointed as sole Arbitrator. This submission is also recorded. Mr.Arun Karthik Mohan, shall enter upon reference, adjudicate upon the arbitrable disputes qua petitioner and respondent regarding said agreement. The arbitration shall be conducted in the Arbitration and Conciliation Centre under the aegis of this Court (MHCAC) in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and Arbitrator's fee shall be as per



Arb.O.P (Com.Div) No.216 of 2021

WEB COPY

Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

Captioned Arb.OP is disposed of in the aforesaid manner. There shall be no order as to costs.

22.02.2022

Speaking/Non-speaking order
Index : Yes / No
gpa

Note: Registry is directed to communicate a copy of this order forthwith to

1. Mr.Arun Karthik Mohan, Advocate,
No.7, Jagadambal Colony,
2nd Street, Royapettah,
Chennai - 600 014.
Mob: 8754463801
2. The Director
Tamil Nadu Mediation Council Centre
-cum- Ex-Officio Member
Madras High Court, Arbitration Centre
Chennai - 104.



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Arb.O.P (Com.Div) No.216 of 2021

M.SUNDAR.J.,

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Arb.O.P (Com.Div) No.216 of 2021

22.02.2022