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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	***16.12.2022***
Delivered on	***12.01.2023***

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.490 of 2022 &
Appln.No.4189 of 2022

Ford India Private Limited, represented by
its General Manager/Authorized Signatory
Dealership Development, Mr.Saurabh Makhija,
S.P.Koil Post, Maraimalai Nagar,
Chengalpattu-603 034. .... Petitioner

Vs.

MPL Cars Private Limited, represented by
its Liquidator, Mr.K.Sivalingam ... Respondent

PRAYER : Original Petition is filed under Sections 34(2)(b)(ii) and 2(a) of Arbitration and Conciliation Act, 1996, seeking to set aside the Arbitral Award dated 03.06.2022 passed by the Arbitral Tribunal insofar as it relates to the award of a sum of Rs.5,00,00,000/- to the respondent and also set aside the part of the Arbitral Award dated 03.06.2022 passed by the Arbitral Tribunal insofar as it relates to rejecting the counter claim of the petitioner for a sum of Rs.25,86,697/-.

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For Petitioner : Mr.S.Arjun Suresh, assisted by Mr.Chetan Sagar for M/s.DUA Associates

For Respondent : Mr.B.Dhanaraj

O R D E R

Feeling aggrieved and dissatisfied with the Award passed by the Sole Arbitrator, Hon'ble Mr.Justice S.Rajeswaran (Retd.) in Arbitration Case No.4 of 2021, dated 03.06.2022, the petitioner has filed the present Original Petition under Section 34 of Arbitration and Conciliation Act, 1996 (in short, 'the Act').

2. It appears that the respondent was appointed as a dealer for the sales and service of Ford vehicles and accordingly, Dealer Sales and Service Agreements (in short, 'DSSA') were executed between the petitioner and respondent and the same were also renewed periodically. After a period of five years of business, the respondent. Vide letter through Email, dated 03.11.2016 has expressed its inability to continue with the business due to financial crisis and operational issues and requested for termination of Dealer Sales and Service Agreements with immediate effect and the same was accepted by the petitioner on 04.11.2016 while two DSSAs in respect of

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Pallikarani and Pondicherry locations were subsisting and the respondent vide letter dated 11.11.2016, the respondent requested the petitoner to support the respondent for atleast running the parts and service operations for Pallikarani location as the respondent had already closed down its operation for Pondicherry location. Therefore, according to the petitioner, they appointed M/s.Eureka Automobiles Private Limited as the authorized dealer of the petitioner and the same was advertised in the The Hindu Newspapers on 18.11.2016 and 30.12.2016 and the respondent's name was not included, which prompted the respondent to raise a dispute and the same was referred to the Arbitrator by invoking arbitration clause contained in the DSSA.

3. The learned Arbitrator, on consideration of claim statement made by the respondent as well as counter claim made by the petitioner and also the evidence adduced by both parties, passed award, dated 03.06.2022 awarding a sum of Rs.5,00,00,000/- to the respondent towards damages while rejecting the counter claim of the petitioner. Challenging the award, the petitioner has come forward with the present petition.

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4. Mr.S.Arjun Suresh, learned counsel appearing for the petitioner would contend that the Award passed by the Sole Arbitrator cannot be sustained mainly on two grounds, viz., firstly, the Award has been passed against the public policy in terms of Sections 34(2)(b)(ii) of the Act and secondly, the Award is vitiated by patent illegality appearing on the face of the Award in terms of Section 34(2)(a) of the Act.

5. The learned counsel would submit that the respondent was appointed as a Dealer for Service and Sales by virtue of Agreement dated 15.06.2011 for Pondicherry and Perungudi at Chennai. The present dispute arises in pursuant to the above said Agreement. Invoking arbitration Clause contained in the Agreement, the dispute was referred to the learned Arbitrator.

6. It appears that on 03.11.2016, the respondent herein sent a letter through E-mail, stating that due to financial crisis and operational issues, they are not in a position to run the authorized dealership of Ford India Private Limited at the following locations, viz., i New No.453, Old No.312,

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Fathima Akthar Court, Anna Salai, Teynampet, Chennai-600 018; ii) No.27, Kavignar Bharathidasan Road, Alwarpet, Chennai-600 018; iii) No.22, Arcot road, Bharani Studio Complex, Saligramam, Chennai-600 093; and iv) No.62, Developed Estate, OMR, Perungudi, Chennai-600 096. Therefore, in the said letter, the respondent has stated that they would like to resign from the Ford Dealership with immediate effect. They have also stated to treat this letter as termination of Dealership Agreement. The petitioner, in turn, sent a reply on 4.11.2016, whereby accepting the decision of the respondent to resign the dealership and to treat letter of the respondent sent through E-mail, dated 3.11.2016 as notice to terminate the DSSA subject to the compliance of post termination obligations. Therefore, he would submit that the contract was terminated for Perungudi Service Centre with effect from 03.11.2016.

7. As far as Pondicherry dealership is concerned, the respondent sent a letter through E-mail, dated 11.11.2016, wherein, they have stated as follows:

"We do not have any source of income for our survival.

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> We have closed the Ford operations at Cochin and Pondicherry and paid the dues to State Bank of India and to your company. The shortfall in funds realised and the liabilities in these places were met by additional private borrowings."

8. In the above circumstances, the petitioner has issued two advertisements on 18.1.2016 and 30.12.2016, wherein, the factum of M/s.Eureka Automobiles Private Limited being appointed as authorized dealer of the petitioner company was advertised and the name of the respondent was not included since the respondent had already tendered their resignation on 03.11.2016 for DSSA at Teynampet and Perungudi and also sent a letter dated 11.11.2016 through E-mail, stating that they have closed down the Ford operations.

9. However, the respondent filed a claim statement before the learned Arbitrator, seeking compensation of unliquidated damages to the tune of Rs.60 Crores for spoiling their reputation and goodwill in the market by the petitioner by not mentioning the dealership details of the respondent in the

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advertisement.

10. The learned counsel for the petitioner would submit that the learned Arbitrator, after analyzing the various aspects, though came to the conclusion that the claimant/respondent has not proved their entire claim substantially for Rs.60 Crores, however, erroneously, even without any evidence, he awarded a sum of Rs.5 Crore as compensation. The learned counsel would point out that having come to the conclusion that the claimant/respondent has not proved their claim, the learned Arbitrator ought not to have awarded Rs.5 crores as compensation without any evidence on record. Therefore, he would contend that the award of the compensation passed by the learned Arbitrator is arbitrary and decided the issue as *amiable compositeur* in terms of Section 28(2) of the Act. He would further contend that in the present case, no parties have agreed mutually to decide the matter by the Arbitrator as *amiable compositeur*. Therefore, the Award passed by the learned Arbitrator is without any evidence and against the provision of Section 28(2) of the Act and hence, it is liable to be set aside. He pointed out that if any award is passed as *amiable compositeur* without

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any authorization of the parties to act as *amiable compositeur* by the Arbitrator *vis-a-vis* passing the award without any evidence, is liable to be vitiated as patent illegality. Further, he would contend that the award is also against the public policy. He also pointed out that the petitioner also made a counter claim by filing C-form for a sum of Rs.23,36,523/- towards outstanding dues and this counter claim was also rejected by the learned Arbitrator without assigning any reasons as required under the Act. The learned Arbitrator is supposed to provide sufficient reasons for rejecting the counter claim of the petitioner and hence, it is also lible to be set aside on ground of patent illegality. In this regard, he would rely upon the decisions of the Hon'ble Supreme Court reported in “(2015) 3 SCC 49 (***Associate Builders versus Delhi Development Authority)”;*** “(2019) 15 SCC 131 (***Ssangyong Engineering and Construction Company Limited versus National Highways Authority of India (NHAI)”*** and “(2006) 6 SCC 113 (***Ghaziabad Development Authority versus Union of India and another)”.***

12. Per contra, the learned counsel appearing for the respondent, Mr.P.Dhanraj, would submit that in the present case, the award passed by

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the learned Arbitrator is not as *amiable compositeur* as no parties have agreed for the same, but he passed the award in terms of Section 28(3) of the Act by taking into consideration the violation committed by the petitioner. In the present case, there is clear cut violation of Clause 7(b) of the Agreement, which provides 'Information to Dealer, that the Company will inform the Dealer of any proposed change in the Company's market representation plans for the Dealer's locality. Therefore, he would contend that this Clause has been violated and taking into consideration this established fact, the learned Arbitrator has rightly awarded compensation of Rs.5 Crores, which requires no interference.

13. The learned counsel for the respondent would further contend that the actual termination of DSSA for Pallikarani and Pondicherry locations takes place on 13.04.2017 in terms of Clause 13(f) with effect from 24.01.2010 and therefore, no termination was taken place as contended by the petitioner. By referring to Section 19 of the Act, the learned counsel would submit that CPC as well as the Evidence Act will not apply to the Arbitral Tribunal as it can fix its own procedure for the purpose of resolving

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the dispute. Therefore, any arguments advanced by the petitioner with regard to the award passed without any evidence is against the provisions of Section 19 of the Act. The learned counsel further submits that the petitioner deliberately not mentioned about the dealership in the advertisements effected by the petitioner on 18.11.2016 and 30.12.2016 while the actual termination took place on 13.04.2017 and hence he would submit that there is no adversity or illegality or any other procedural violation of the Act or any patent illegalities as contended by the petitoner. Hence, the learned counsel sought for dismissal of the petition as devoid of merits.

14. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the entire material placed on record.

15. The present petition has been filed, challenging the award passed by the Sole Arbitrator, dated 03.06.2022, mainly on two grounds, firstly, it is against public policy and secondly, patent illegality. The respondent filed a claim statement before the learned Arbitrator for a sum of Rs.60 crores

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towards compensation for spoiling reputation by non-inclusion of their name in the advertisements of the petitioner's company dated 18.11.2016 and 30.12.2016. The reason provided by the petitioner for non-inclusion of the respondent's name in the advertisements was due to the reason that the dealership agreement at Pallikarani location was terminated at the request of the respondent themselves with effect from 03.11.2016 and as far as the dealership agreement at Podicherry location is concerned, by virtue of the letter dated 11.11.2016 sent through E-mail, informing that they closed down all operations at Pondicherry. Therefore, under these circumstances only, the dealership of the respondent has not been mentioned in the above said two advertisements. Had the petitioner mentioned the name of the respondent in the advertisements, it would clearly amount to misrepresenting the public as admittedly, the dealership of the respondent at Pallikarani and Pondicyerry locations has been already terminated by the respondent themselves and also closed down the operations. Therefore, the contention raised on behalf of the respondent that non-mentioning of the respondent's name as a dealer of the petitioner in the advertisements had caused dis-reputation and bad image in the automobile segment, is not

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tenable.

16. The learned Arbitrator, while passing the award, has categorically come to the conclusion in paragraph 16, which reads as under:

> "16. The next question is what is the compensation that should be payable by the Respondent to the Claimant for this glaring violation. It could not be denied by the Respondent that the claim of the Claimant that at one stage the Claimant had 25 show-rooms, 30 work-shops, 2000 employees and their turnover was close to Rs.700 crores as a group. **At the same time, the Claimant is not in a position to prove their estimated loss for omitting their name of the Claimant as a dealer in The Hindu advertisement dated 18.11.2016 & 30.12.2016, during the subsistence of dealership at Pondicherry**."
> (Emphasis added)

17. Having come to the above said conclusion, the learned Arbitrator still awarded Rs.5 Crores as compensation without any evidence. Therefore, once the learned Arbitrator came to the conclusion that the respondent/claimant has not proved the claim, he should have rejected the claim in entirety. But on the other hand, the learned Arbitrator has awarded

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Rs.5 Crores towards compensation that too without any evidence on record by acting as *amiable compositeur* even though neither the petitioner nor respondent have expressly authorized to do so, in violation of the provision under Section 28(2) of the Act and therefore, it is liable to be vitiated on this ground *vis-a-vis* on the ground of patent illegality in terms of Section 34(2) of the Act.

18. As far as the termination notice dated 13.04.2017 (Ex.C18) is concerned, the learned Arbitrator has come to the conclusion that the said termination is with regard to Pallikarani and present dispute arose out of the agreement dated 15.06.2011 which pertains to Perungudi alone. Therefore, the termination notice said to have been sent on 14.04.2017 is not the subject matter of the dispute arising out of dealership agreement dated 15.06.2011 and this was specifically mentioned by the learned Arbitrator while deciding the issue No.2. Further, while rejecting the counter claim, the learned Arbitrator passed the award while deciding Issue Nos.5 and 6 in para (iv) (v), which read as under:

(iv) ISSUE NO. 5 and 6: Whether the Respondent is

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entitled to claim a sum of Rs.23,36,523/- towards outstanding dues? Whether the Respondent is entitled to claim a sum of Rs.2,50,170/- being the additional/ differential rate of CST for the financial term 2014-2017 for the consolidated value of Rs.20,01,203 and the Respondent can claim interest on the amounts claimed in the counter claim?

These issues are relating to the counter claims made by the Respondent while filing their counter to the claim statement. As rightly pointed out by the learned counsel for the Claimant, it is only a counter- blast and an afterthought, which has been raised for the first time, that too, without any acceptable evidence. Therefore, this Tribunal does not find any merits in the counter claims and accordingly they are rejected.

(v) ISSUE NOS. 7 :- To what other reliefs the parties are entitled?

In the facts and circumstances of the case, the parties are directed to bear their own costs and excepting the award of Rs.5 crores, the Claimant is not entitled to any other relief. The Question of payment of interest will not arise in a case of this nature where a compensation of Rs.5 crores is awarded for the damages.

Therefore the claim petition is partly allowed and

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> the Respondent is directed to pay to the Claimant a sum of Rs.5 crores towards compensation as narrated above."

19. A perusal of the above, it is clear that while deciding the above issues and rejecting the counter claim of the petitioner herein, the learned Arbitrator has not provided any reasons as required in Section 23(2A) of the Act and it is a non-speaking award and therefore, the same is liable to be vitiated by patent illegality.

20. With regard to violation of Clause 7(b) is concerned, it provides that the company will inform the Dealer of any proposed change in the company's market representation plans for the Dealer's locality. In the present case, the dealership of the respondent was terminated at the instance of the respondent themselves and since no one is appointed in the said locality where the respondent have been nominated in terms of the Agreement, the issue that the petitioner has not informed anything about the proposed change to the respondent does not arise. Therefore, the contention raised on behalf of the respondent/claimant that the petitioner violated Clause 7(b) of the Agreement is not acceptable.

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21. It is worthwhile to refer the decision of the Hon'ble Supreme Court reported in "(2015) 3 SCC 49 (***Associate Builders versus Delhi Development Authority)",*** wherein, it has been held as under in para 31 and 36:

> "31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:
>
> (i) a finding is based on no evidence, or
>
> (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
>
> (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse."

22. As already discussed above, the learned Arbitrator has passed the award and based on no evidence and even having observed that the respondent/claimant has not proved the claim substantially. Therefore, the award passed by the learned Arbitrator towards unliquidated damages for spoiling the reputation of the respondent by the petitioner in not mentioning the name of the respondent in the advertisements, cannot be sustained.

23. In "***Ssangyong Engineering and Construction Company***

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Limited versus National Highways Authority of India (NHAI)" reported in (2019) 15 SCC 131, it has been held as under in para 36 and 39, 41 and 42:

> "36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of Associate Builders (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of Associate Builders (supra). Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco (supra), as understood in Associate Builders (supra), and paragraphs 28 and 29 in particular, is now done away with.
>
> "39. 28. To elucidate, paragraph 42.1 of Associate Builders (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of Associate Builders (supra), however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.
>
> "41.What is important to note is that a decision which

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> is perverse, as understood in paragraphs 31 and 32 of Associate Builders (supra), while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterized as perverse.
>
> 42. Given the fact that the amended Act will now apply, and that the "patent illegality" ground for setting aside arbitral awards in international commercial arbitrations will not apply, it is necessary to advert to the grounds contained in Section 34(2)(a)(iii) and (iv) as applicable to the facts of the present case."

24. From the above decisions, it is clear that in the event of any award passed based on no evidence, it would clearly amount to a patent illegality appearing on the face of the award and the same would consider as a ground for setting aside the award in terms of Section 34(2-A) of the Act. As

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already discussed above, in the present case also, the learned Arbitrator has committed patent illegality and passed the award, which in the opinion of this Court, is liable to set aside.

25. In the light of the above, the Original Petition is allowed and the award passed by the learned Arbitrator, dated 03.06.2022 is hereby set aside. There will be no order as to costs. Connected Application is closed.

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KRISHNAN RAMASAMY.J.,

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Pre delivery Order in
Arb.O.P.No.490 of 2022

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