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C.M.A.No.2793 of 2022 & batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2023

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2793, 2804, 2810, 2811, 2812, 2814, 2819 & 2820 of 2022

C.M.A.No.2793 of 2022

M/s.Sundaram Finance Limited,
No.21, Patullos Road, Chennai 600 002.
Rep. by its Manager (legal)
S.Seshadri

... Appellant

Vs.

M/s.Coronation Infrastructure Pvt. Ltd.,
having its registered office at
The Mira Corporate Suits
E 01 & 2 Ishwar Nagar, Srinivaspuri,
South Delhi - 110065,
New Delhi.

... Respondent

Prayer: Appeal filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 against the order dated 02.08.2022 passed by the learned sole Arbitrator, in Interim Application No.:1 of 2022 in Arbitration Case in Arb.O.P.No.:424 of 2021.

For Appellant : Mr.R.Umashankar
for M/s.Sri and Shankar Associates

For Respondent : No appearance



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COMMON JUDGMENT

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The Appellant herein is the claim Petitioner before the Arbitral Tribunal.

These Appeals have been filed against the order passed in I.A.Nos.1, 1, 1, 1, 1, 1, 1 & 1 of 2022 in OP.Nos.424, 435 to 441 of 2021, dated 02.08.2022, by the sole Arbitrator.

2.The Respondent company has availed loan on various heads, for the purchase of machineries and vehicles from the Appellant. As it failed to re-pay the same, Claim Petitions have been preferred by the Appellant herein, after getting necessary orders for appointment of Arbitrator. Before the Arbitral Tribunal, 17 applications have been filed in I.A.Nos.1, 1, 1, 1, 1, 1, 1 & 1 of 2022 in OP.Nos.424, 435 to 441 of 2021. The same were dismissed and hence the present Appeals.

3. (a) The Appellant/claimant has preferred eight claim Petitions against the respondent company and guarantors for recovery of money, based on the loan agreements under which, according to the Appellant/claimant, the finance had been accorded to the respondent for the purchase of the vehicles and the purchased vehicles had been hypothecated to the financier i.e., the



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Appellant/claimant and that the Respondent had committed default in paying the instalments and as the respondent had failed to respond in making the payments even after the issuance of demand notices by the Appellant/claimant and as the loan agreements empowered the Appellant/claimant to seize the vehicles, on the failure of the respondent to make the payments, alleging that the respondent is endeavouring to remove and secrete the hypothecated assets, thus the need had arisen for the appointment of a receiver to take the possession and custody of the vehicles in question.

(b) The respondent had pleaded *inter alia* that the loan agreements are perse illegal and not binding upon the respondent as according to them the signatures of the respondent are not contained at all places and pages of the loan agreements and that the contents of the loan agreements had been filled up by the claimant unilaterally with reference to date, names of the parties, details in the 1st and 2nd schedules and denied the allegations contained in the applications.

4.The Arbitration Tribunal has negated the claim and refused to appoint a receiver to seize and deliver the hypothecated assets, as it is and



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where it is.

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5. Heard the learned counsel for the Appellant. Learned counsel for the Respondent has withdrawn his appearance. Even though name of the Respondent printed in the causelist, no one entered appearance on behalf of Respondent. Hence, the matter is decided on merits.

6. (a) After going through the records and the decisions made by this Court in the case of ***Cholamandalam DBS Finance Ltd., Rep. by its Assistant Manager Legal, K.Venkateswaran Vs. Sudheesh Kumar***, reported in **2010 (1) CTC 481** and ***L & T Finance Ltd., Vs. G.G.Granites***, reported in **2013(6) CTC 654**, I find that the Arbitral Tribunal has necessary powers to grant the relief of appointment of a receiver by invoking Section 17 of the Arbitration and Conciliation Act, 1996.

(b) In the L & T case's decision, the High Court, after analyzing the decision in ***Hinduja Leyland Finance Limited Vs. Jaffer Khan and Ors*** reported in **2013 (3) CTC 76**, has clarified that the guidelines issued in the ***Cholamandalam's*** case, still hold the field and that subject to the said



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guidelines, it is well within the right of the finance companies to seek the appointment of advocate commissioner to seize and possess the hypothecated vehicles or equipments u/s.17 of Arbitration & Conciliation Act, 1996.

7.Taking into consideration that the amount has already been disbursed and the Respondent/Company purchased vehicles, machineries and if the same is not taken under custody, in the event of arbitration order being allowed, the Appellant will be put into irreparable loss and hardship and hence, the order of the learned sole Arbitrator is hereby set aside and I.A.Nos.1, 1, 1, 1, 1, 1, 1 & 1 of 2022 in OP.Nos.424, 435 to 441 of 2021 stands allowed. Since the Arbitration proceedings are pending before the former Judge of this Court, this Court appoints **Mr.Umed Singh Rana, Branch Manager, New Delhi- Punjabi Bagh CV Branch** as Receiver to seize and deliver the hypothecated assets.

8.Accordingly, these Civil Miscellaneous Appeals are allowed. No costs.

02.02.2023

Index : Yes/No

Neutral citation : Yes/No

Speaking Order/Non-Speaking Order

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Note: Issue order copy on 28.02.2023.



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RMT.TEEKAA RAMAN.J,

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2812, 2814, 2819 & 2820 of 2022**

Dated: 02.02.2023