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Arb.OP(Com.Div)No.61 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.OP(Com.Div)No.61 of 2024

M/s.Cholamandalam Investment and Finance
Company Limited,
No.45, Justice Basheer Ahmed Sayeed Building,
Ground Floor, 2nd Line Beach, Moore Street,
Parrys, Chennai 600 001.

Represented by its Authorised Signatory

...Petitioner

Vs

1. M/s.Suriya Motors LLP
Represented by its Partner
No.4/193, E.C.R. Palavakkam,
Chennai 600 041.

Also at:

No.4/14A, 1st Street, Bakthavatchalam Nagar,
Adyar, Chennai 600 020.

2. Mr.T.R.S.Balakkrishnan

3. Mrs.Swaminathan Sindhu

....Respondents

Prayer:- This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate the dispute arising under Agreement for Trade Advance Dated 30.06.2022 between the petitioner and the respondents.

For Petitioner : Mr.D.Pradeep Kumar

For R1 to R3 : Notice served, No appearance



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ORDER

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This Arbitration Original Petition has been filed, under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate the dispute arising under Agreement for Trade Advance Dated 30.06.2022 between the petitioner and the respondents.

2. The case of the petitioner is that, the first respondent is a dealer of vehicles and 2nd and 3rd respondents have approached the petitioner during the month of June 2022 seeking Trade Advance Facility, and the said request was acceded to, by the petitioner. Accordingly, the first respondent as borrower entered into an Agreement for Trade Advance (in short, “Agreement”), dated 30.06.2022 with the petitioner.

3. The learned counsel for the petitioner submitted that, by virtue of the aforesaid agreement dated 30.06.2022, the first respondent had availed a sum of Rs.11,00,000/- as Trade Advance on 28.02.2023. However, after receipt of aforesaid amount, the first respondent had failed to repay the outstanding of Rs.11,00,000/- and interest thereon as per the Schedule of the agreement and committed default. Hence, the first respondent is liable



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to pay a sum of Rs.12,98,256/- as on 23.11.2023. Further, he submitted that the petitioner made demand notice dated 28.11.2023, stating that the agreement was terminated and the respondents were called upon to pay a sum of Rs.12,98,256/- as on 23.11.2023. Despite the same, the respondents have not come forward to settle the amount. Therefore, the petitioner invoked Arbitration Clause 24 of the agreement dated 30.06.2022, which reads as follows:

“ It is mutually agreed that in the event of any dispute or misunderstanding that might be arising between the parties herein, whether as to the interpretation of the terms and conditions of this agreement or as to the identification of the specific rights and obligations of the parties herein, or otherwise the parties undertake to settle the same by way of referring such dispute to the arbitration of the sole arbitrator to be appointed at the exclusive option of the LENDER. The procedure prescribed under the Arbitration and Conciliation Act of 1996 shall be adopted by the parties in this regard and the law applicable shall be Indian law. The venue of the arbitration proceedings shall be Chennai and the award passed by the arbitrator shall be conclusive and final and be binding on the parties herein. Courts in Chennai alone shall have exclusive jurisdiction to try any consequential proceedings arising from the said award.”



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4. The learned counsel for the petitioner further would submit that, the petitioner has also issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 to the respondents on 01.12.2023 nominating Sole Arbitrator and called upon the respondents to give their acceptance for the same. Despite the same, the respondents have failed to send any reply. Thus, the petitioner filed the present O.P., before this Court for appointment of Sole Arbitrator.

5. Despite service of notice on the respondents and their name being printed in the cause list, there is no representation on behalf of the respondents.

6. In view of the above submissions made by the learned counsel for the petitioner and on perusal of the documents, it appears that the present dispute is arising out of Agreement dated 30.06.2022 and the same can be decided by the sole arbitrator appointed by this Court.

7. Accordingly, this Arbitration Original Petition is disposed of, with the following directions:-



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- (a) **Mr.G.Palaniappan, Former District Judge, Cell No.9443335815, A1, 1J Lakeside 2 Apartment, Puzhal, Ambattur Main Road, Puzhal, Chennai 600 066,** is appointed as a Sole Arbitrator to enter upon reference and adjudicate the disputes between the parties, arising out of the above said agreement.
- (b) The Sole Arbitrator shall initiate arbitration proceedings and after issuing notice to the parties concerned and upon hearing them, pass an award, on merits and in accordance with law and uninfluenced by any of the observations made in this order, within a period of six months from the date of receipt of a copy of this order.
- (c) The Sole Arbitrator shall be paid fees and other incidental charges, as per the Schedule IV of the Act and the same shall be borne by both the parties equally. In the event of non-appearance of the Respondents, the Petitioner shall bear the entire remuneration and other expenses and thereafter, the Petitioner is at liberty to recover the same directly from the Respondents.

18.04.2024

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Neutral Citation: Yes/No

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Note: Issue order copy on 06.05.2024.



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