

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 754 OF 2014

M/s.St.Antony's Motors India Ltd. & Ors. Petitioners

VERSUS

**M/s.Tata Capital Financial Services Ltd.
(Formerly Tata Capital Ltd.) Respondents**

Ms.Shyamli Hajela, i/b. H & M Legal Associates for the Petitioners.

Mr.Chetan Kapadia, a/w. Mr.Sriniwas Atreya, Mr.Sankalp Anantwar, i/b. Indialaw for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 20th JANUARY, 2015

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996 the petitioner impugned the arbitral award dated 10th February, 2014 rendered by the learned arbitrator directing the petitioner to pay a sum of Rs. 98,74,570.30 togetherwith further interest thereon at the rate of 15% per annum on Rs. 98,74,570.30 w.e.f. 5th February, 2013 and also a sum of Rs. 1,00,000/- towards the fees of the learned arbitrator and cost of the arbitration.

2. The award is impugned basically on the ground that the learned arbitrator has not considered the documents though referred in paragraph 15 of the impugned award while allowing the claims made by the respondents. It is submitted that the arrangements arrived at between the petitioner and the respondents and supply of the vehicle was a sort of triparte agreement. It is submitted by the learned counsel that though under instructions of the respondents, the petitioner had surrendered

the vehicle worth more than Rs.58 lacs, the respondents agreed to consider to give credit only of an amount of Rs.30,40,000/- and not the entire sum. It is submitted that learned arbitrator even did not give credit of Rs.30,40,000/- which was admittedly received by the respondents from R.F. Motors Pvt. Ltd. on behalf of the petitioner.

3. Learned counsel also submits that the learned arbitrator could not have awarded 6% additional interest on the claim amount.

4. Mr.Kapadia, learned counsel for the respondents on the other hand submits that the documents referred in paragraph 15 of the impugned award were sought to be relied upon by the petitioner including the ledger accounts pertaining to M/s.Tata Motors Limited who were not a party to the arbitration proceedings. Any transactions between the petitioner with the said Tata Motors Limited could not have been referred to and relied upon in the arbitration proceedings and no amount due and payable if any by the said M/s.Tata Motors Limited to the petitioner could have adjusted against the claims made by the respondents against the petitioner. It is submitted that the learned arbitrator was thus justified in rejecting those documents which were relating to the accounts between the petitioner and M/s.Tata Motors Limited.

5. Learned counsel invited my attention to the letter dated 25th April, 2013 which was addressed by the petitioner to the respondents informing that the purchase consideration of Rs.30,40,000/- would be paid directly by R.F.Motors Pvt.Ltd. to the respondents on behalf of the petitioner towards partial discharge of their outstanding dues. It is submitted that the respondents received the said amount of Rs.30,40,000/- from R.F. Motors Pvt.Ltd. and have given credit of the said amount in the statement of accounts. Learned counsel invited my attention to

the statement of account of the petitioner in the books of the respondents showing the credit of the said amount of Rs.30,40,000/- at the appropriate time and thereby reducing the amount due and payable by the petitioner to the respondents.

6. Learned counsel also invited my attention to the application made by the respondents before the learned arbitrator for taking such statement of account on record and for passing appropriate order in terms of the statement of account. It is submitted that since the said amount of Rs.30,40,000/- was received by the respondents after filing statement of claim, the same was though reflected in the affidavit in rejoinder and in the application for making statement of account, the learned arbitrator inadvertently did not give credit of the said amount of Rs.30,40,000/- to the petitioner. The learned counsel fairly states that to that extent this court can modify the impugned award.

7. Learned counsel submits that if the credit of the said amount is given to the petitioner on the appropriate date, the amount of the award would stand reduced to Rs.81,64,708/- as on 18th November, 2013.

8. In so far as submission of the learned counsel that the respondents could not have claimed the additional interest at the rate of 6% is concerned, my attention is invited to the modified agreement entered into between the parties in support of the submission that the earlier agreement had provided for payment of 4% additional interest which was enhanced to 6% in the modification agreement. When the said document is pointed out by the learned counsel for the respondents, in rejoinder learned counsel for the petitioner did not dispute that the petitioner was liable to pay 6% additional interest. It is however urged by the learned counsel that since there was delay in transfer of the balance amount from one company to another company of the respondents, the respondents could not have charged

interest at such additional rate to the petitioner for the period of delay for which the respondents were responsible.

9. A perusal of the record indicates that the petitioner did not dispute that the petitioner had availed of the loan facilities from respondents. The only dispute appears to have been raised before the learned arbitrator was that the petitioner had to recover certain amounts from Tata Motors Limited and statement of account of the petitioner with Tata Motors Limited were sought to be relied upon before the learned arbitrator with a prayer to adjust the said amount against the dues of the petitioner payable to the respondents. In paragraph 13 of the impugned award, the learned arbitrator in my view has rightly rejected those documents on the ground that Tata Motors Limited was not a party to the arbitration proceedings. Any transaction between the petitioner and Tata Motors Limited could not have been brought in for seeking adjustment in so far as claims made by the respondents against the petitioner are concerned. In my view, there is no infirmity with that part of the award rendered by the learned arbitrator.

10. A perusal of the award indicates that the learned arbitrator has rendered a finding of fact that the petitioner had availed and utilised the facilities granted by the respondents and had admitted the liability which finding is not perverse.

11. Learned counsel appearing for the petitioner does not dispute that some amount was due and payable by the petitioner to the respondents. It is however submitted that the vehicle worth more than Rs.58 lacs was surrendered to the said R.F.Motors Pvt. Ltd. and thus the petitioner was entitled to get credit of the entire amount and not the sum of Rs.30,40,000/- only. A perusal of the letter dated 25th April, 2013 addressed by the petitioner to the respondents clearly indicates that the

respondents were directed to give credit of the amount of Rs.30,40,000/- only towards partial discharge of their outstanding dues to the respondents and not for the sum of Rs.58 lacs, credit in respect of which is now sought by the petitioner against the respondents. I am thus not inclined to accept the submission of the learned counsel for the petitioner that the respondents ought to have given credit of Rs.58 lacs and not Rs.30,40,000/-. The submission made by the learned counsel is contrary to letter dated 25th April, 2013 of the petitioner. There is thus no merit in this submission of the learned counsel.

12. In so far as additional rate of interest is concerned, a perusal of the record clearly indicates that the rate of interest charged by the respondents to the petitioner was a contractual rate of interest. Not only the parties but the learned arbitrator was also bound to consider the terms of the contract which has been rightly considered. No interference with the award in so far as interest is concerned is warranted.

13. Since the learned counsel for the respondents has fairly admitted that though in the rejoinder as well as in the application for taking statement of account on record, the respondents had agreed to give credit had given credit and had agreed to reduce the claim proposed to the extent of Rs.30,40,000/-, the learned arbitrator has inadvertently not given credit of the said amount. I am inclined to accept the submission of Mr.Kapadia, learned counsel for the respondents and to modify the award to that extent and to give credit of the said sum to the petitioner. The awarded sum thus in my view stands reduced to Rs.81,64,708/- as on 18th November, 2013. The balance part of the award in so far as the interest on the said amount would be binding on the parties and is upheld. It is made clear that the award of interest by the learned arbitrator would be on the sum of Rs.81,64,708/-

w.e.f. 19th November, 2013.

14. The impugned award is partly modified as stated aforesaid. Petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]