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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 441 OF 2018**

Volkswagen Finance Private Limited ... Petitioner

vs.

ATR Cars Private Limited and Ors. ... Respondent

Mr. Chinmay Gupte i/b. Mohit Gadkari & Co. for the Petitioner.

None for the Respondent.

CORAM : A.K. MENON, J.

DATE : 27st AUGUST, 2018

P. C.

1. This petition is filed under section 29-A of the Arbitration and Conciliation Act, 1996. Reference to arbitrator was made on 30th April, 2016 and on 4th May, 2016 the arbitrator entered reference. The petitioner is believed to have received a letter from the Advocate for the respondent contending that disputes pertaining to the subject matter of the reference was pending in a separate arbitration between the respondent and a group company of the petitioners.

2. On 26th May, 2016 the arbitrator issued notice to the respondent to appear in person. On 1st June, 2016 respondent replied once again stating that there was a disputes pending between Volkswagen Group Sales India Private Ltd.(a company under the same group and management as the petitioner herein) and the respondent. The respondent was called upon to appear before the tribunal. They entered appearance for the first time on 1st September, 2018 and sought time.

Thereafter once again the respondents failed to appear before the tribunal. The hearing was adjourned from time to time between 21st December, 2018 to 16th June, 2017. No progress is seen to have been made given the respondent's conduct.

3. The Respondent then appeared through its Advocate on 16th June, 2017 and sought further time. In the meantime on 8th September, 2018 the statement of claim came to be filed. However, despite appearance no vakalatnama was been filed. In the meantime further adjournments were granted at the respondent's request. Ultimately on 27th November, 2017 the respondent entered appearance and time was granted to file reply to the statement of claim. It is at this stage that the time for completing the proceedings expired. The arbitrator there after directed the parties to move this Court. That is how the petition has been filed in this Court.

4. Mr. Gupte, learned counsel for the petitioners states that pursuant to the order passed on 30th July, 2018, fresh notice has been served upon the respondent. Today the respondent is absent. It is stated that respondent no. 3 has expired. The petitioners are also seen to have served the Advocate who appeared for the respondent with a copy of this petition. Today even the said Advocates are absent. In the circumstances it appears that the respondent is deliberately delaying the proceedings. Considering the fact that the reference was made on 30th April, 2016, sufficient time has elapsed. However, I deem it appropriate that one more opportunity be granted to the respondent and time be extended. Accordingly, I pass the following order :

(i) Time to complete arbitration proceedings is extended by 6 months from today. Copy of the said order shall be filed before the Arbitral Tribunal in order for the Tribunal to hear the matter.

(ii) Copy of this order shall be served upon the respondent. Affidavit of service to be filed with the Tribunal on the next date. Copy of the communications and this order shall also be transmitted to the respondent and their Advocates via email to enable prompt compliance.

(iii) If the respondent does not appear on the next date fixed before the Arbitrator and file its reply within a period of three weeks from date of communication of this order by any form for recorded delivery, the Tribunal may proceed ex-parte.

(iv) Petition disposed in the above terms.

(A.K. MENON, J.)

Rajeshwari
Ramesh
Pillai

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Rajeshwari
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