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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L.) NO.867 OF 2019

Tata Motors Limited & Anr. ..Petitioners
Vs.
M/s.Ghosh Brothers Automobiles
(India) Pvt. Ltd. & Ors. ..Respondents

Mr.Abhijeet Marathe for Petitioner.
Mr.Rohan Cama with Ms.Jesal Shah i/b. M/s.Daru Shah & Co. for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 6th AUGUST, 2019

P.C.:

Heard learned Counsel for the petitioners and learned Counsel for the respondents.

2. This is a petition filed under Section 29A of the Arbitration and Conciliation Act, 1996 (for short, "the Act") whereby the petitioners have prayed for extension of the mandate of the arbitral tribunal which has expired on 16 May 2019. It is stated that the parties have completed the pleadings and the respondents have also filed their counter-claim. It appears that at a belated stage the parties have submitted their reply to an application dated 13 June 2019 filed on

behalf of the respondents under Sections 12 and 13 of the Act whereby the respondents contended that the learned arbitrator had two other arbitrations referred by Bombay Chamber of Commerce and Industry in relation to the petitioners/claimants and thus this would give rise to a ground to have justifiable doubts as to the independence or impartiality of the arbitrator and more particularly item no.22 of the Fifth Schedule to the Act.

3. The learned arbitrator is a former Judge of this Court who has passed a detailed order on 11 July 2019 on the said application of the respondent after hearing the parties, thereby rejecting the application filed by the respondents under Sections 12 and 13. It is observed in the said order that the appointment was made by Bombay Chamber of Commerce and Industry. None of the parties are known to the arbitrator. Learned sole arbitrator also considered the position as laid down in the decisions as referred in the said order to hold that a request as made by respondents cannot be accepted and that there was no ground so that the respondents would have any doubt in regard to the independence and/or impartiality of the sole arbitrator.

4. The learned sole arbitrator in the minutes of the meeting held on 4 July 2019 had observed that the mandate of the arbitral tribunal had

expired and it needs to be continued for a period of six months and the parties should give in writing their consent for six months. It was observed that if there is no agreement between the parties, the parties would have to take a recourse under Sub-section (4) of Section 29A of the Act. In these circumstances, the petitioners are before this Court.

5. Mr.Cama, learned Counsel for the respondents has raised the same objection as urged before the learned sole arbitrator by the respondents in their application filed under Sections 12 and 13 of the Act to submit that this Court should consider appointing a substitute arbitrator. Learned Counsel for the petitioner has opposed the contentions as urged by Mr.Cama.

6. Having heard learned Counsel for the parties and having perused the record and more particularly the application as filed by respondents under Section 12 and 13 as also the order passed on the said application dated 11 July 2019 by the learned sole arbitrator, in my opinion the respondents in the facts of the case would not be correct to urge these contentions in the present proceedings filed under Section 29A of the Act, more particularly considering the detailed order passed by the learned arbitrator as also the specific provisions of Sub-section (5) of Section 13 of the Act which provides that the aggrieved party can raise

such challenges in assailing the arbitral award as per the provisions of Section 34 of the Act. Thus, it would be in the interest of justice that the present petition is allowed and the mandate of arbitral tribunal is extended for a period of 8 months. The parties shall co-operate in early conclusion of the arbitral proceedings. All contentions of the parties are expressly kept open.

7. Disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]