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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 269 OF 2020**

Garodia Automobiles Pvt Ltd	...Petitioner
<i>Versus</i>	
FCA India Automobiles Pvt Ltd	...Respondent

Mr Udaya Sankar Samudrala, *with Sarita Yadav, for the Petitioner.*
Mr Ajit Kapadia, *with Aditya Chitale, Prathamesh Bhosle, Avinash Belge, & N Shrikhande, i/b MNS & Legal, for the Respondent.*

CORAM: G.S. PATEL, J.
DATED: 2nd March 2020

PC:-

1. I have heard Mr Samudrala at great length. He has argued the matter thoroughly and extensively and canvassed before me all available points based on the Petition. In fact, it would be correct to say that Mr Samudrala in his endeavours has left no stone unturned in the prosecution of his case. This is hardly surprising because Mr Samudrala is well known in this Court for his diligence to his client's cause. If the client, the representative of the Petitioner, has chosen not to remain present in Court, then I am afraid that is entirely his lookout. I will not permit under any circumstances any representative of this Petitioner, including Mr Ashish Garodia who has affirmed this Petition, to at any time cast the slightest aspersions on Mr Samudrala or question his conduct of the present case.

2. Having given my most careful consideration to the case presented by Mr Samudrala, I do not believe it is possible to grant the reliefs sought in the manner in which they are placed. These are the two prayers:

“a. That this Hon’ble Court may be pleased to pass an order extending the time of the Arbitral Tribunal by a further period of 12 months for making the Award in respect of the claims of the Petitioner filed before the Hon’ble Tribunal.

b. That this Hon’ble Court may be pleased to pass an appropriate order directing the Arbitral Tribunal to consider and pass appropriate orders all applications and/or Review Petitions filed by the Petitioner before the Arbitral Tribunal in respect of the claims of the Petitioner.”

3. A few facts are necessary. The Petitioner issued a notice dated 24th July 2017 under Section 21 on account of disputes having arisen between the Petitioner and the Respondent under a Dealership Agreement dated 19th April 2014. That Dealership Agreement had an arbitration clause No. 17. That clause reads thus:

“Article 17—Governing Law and Dispute Resolution.

(1) This Agreement is made in and will be construed and governed in all respects in accordance with the laws of India.

(2) The Parties will seek to resolve through amicable negotiations all disputes, controversies or claims arising from the interpretations, performance or non-performance of this Agreement or any and all transactions related to this Agreement (including but not limited to, the validity, scope and enforceability of this provision, or disputes under rights

granted pursuant to law). If the Parties fail to promptly resolve such disputes, controversies or claims through amicable negotiations, seek disputes, controversies or claims shall be finally and completely settled by reference to arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996. Every arbitration pursuant to this Article 17 shall be conducted by three (3) arbitrators, one (1) to be appointed by GENERAL DISTRIBUTOR, one (1) to be appointed by DEALER, and the third arbitrator to be appointed by the two (2) arbitrators appointed by GENERAL DISTRIBUTOR and DEALER. Both the Parties specifically agree that in the event where a Party fails to appoint its arbitrator within 14 days from the receipt of notice (for arbitrator's appointment) from the Party referring dispute to arbitration, upon expiry of said 14 days the arbitrator appointed by the Party referring disputes to arbitration shall act as sole arbitrator. The language to be used in the arbitral proceedings shall be the English language and the venue of the arbitration shall be Mumbai, India (The costs of arbitration shall be borne by the Parties in such manner as the arbitrators shall direct in their arbitral award.)”

4. The reference was thus to a three-member tribunal. The two sides proceeded to nominate arbitrators and the two arbitrators then nominated a presiding arbitrator. The three-member tribunal held a preliminary meeting on 15th September 2017. The usual procedural directions and orders were passed including, and this is important, in regard to the fees of the arbitral tribunal. The Petition in paragraph 4 summarizes this aspect of the matter, i.e. the question of fees, but I do not think that it is appropriate or even seemly to set these out in the order.

5. The Petitioner filed a Statement of Claim on 6th November 2017. The claim of the Petitioner was for Rs. 25,83,45,735/-. The Respondent filed a counter claim for Rs. 1,21,85,614.02. Paragraph 7 of the Petition makes a grievance about the advance called for by the arbitral tribunal and the fact that fees for each hearing were also required to be paid.

6. The Petitioner made an application for recall of the 15th September 2017 procedural order. This application met its inevitable fate with an order of dismissal on 4th April 2018. The Petitioner claims that it is in these circumstances that the Petitioner made the payment and then continued to make payments for hearings thereafter.

7. Before the tribunal, the Petitioner led the evidence of two witnesses and their cross-examination was conducted on a few dates. Paragraph 13 of the Petition accepts that the Petitioner took adjournments on as many as six occasions. There are reasons set out in a tabulation below paragraph 13 including the illness of one or more persons connected with the Petitioner. What is then stated in paragraph 14 is that the tribunal asked the Petitioner to deposit fees for the meetings cancelled or adjourned at the Petitioner's request and there also came to be made an order on 15th January 2019 that the Petitioner alone would bear the costs of those cancelled arbitral meetings. The arbitral tribunal did so on the basis that as early as on 15th September 2017, when it made the first procedural order, it had put both sides to notice that any cancellation would require at least four weeks' advance intimation. I will take this to mean that an exception would have been made for any immediate unforeseen

emergency but there are none such cited or mentioned in the Petition itself. Then there are more details of further illnesses.

8. It appears that the Petitioner once again sought recall of the further orders of 15th (and 16th) January 2019 by an application dated 23rd February 2019. This too was rejected under Section 38(2) of the Arbitration and Conciliation Act 1996 on 25th February 2019. What the tribunal then did was to suspend the arbitration for a period of four weeks pending a deposit of fees by the petitioner with the three members of the tribunal in equal shares. If that deposit was made, the proceedings were to stand revived and further dates were then to be fixed. If not, the arbitral proceedings, so far as the claim of the Petitioner was concerned, were to stand terminated without further reference to the tribunal. However, the tribunal would continue in regard to the counter claim.

9. The Petitioner says that it could not make the payment required within the stipulated four week period. The arbitration in respect of its Statement of Claim stood terminated. It appears that by this time the parties had extended the arbitral mandate for a period of six months and this extended mandate ended on 4th March 2019.

10. Obviously, since there was no arbitral decision on the Counter-Claim within this period, the Respondent filed an application dated 2nd April 2019 under Section 29-A of the Arbitration and Conciliation Act 1996 in this court. It seems that time was in fact extended.

11. The Petitioner then filed an application under Section 14 of the Arbitration and Conciliation Act 1996 seeking the appointment of a substitute tribunal. This was allowed to be withdrawn on 13th August 2019 granting the Petitioner leave to approach the tribunal.

12. In the meantime, one of the three arbitrators, a learned former Judge nominated by the Petitioner, recused himself. For the record, I note that he was substituted by another arbitrator. A three-member tribunal was properly reconstituted. The substituted arbitrator accepted his nomination by a letter dated 22nd August 2019.

13. It is at this stage that the Petitioner filed a third application dated 6th January 2020 seeking a recall of the previous order of 25th February 2019 (the one that conditionally terminated the arbitral mandate on the Statement of Claim). On 6th February 2020, the arbitral tribunal took up the Petitioner's 6th January 2020 application. Both sides were heard. At this stage, the Petitioner sought an adjournment to enable him to move an application before this Court under Section 29-A of the Arbitration and Conciliation Act 1996. This was opposed. That application for an adjournment was in fact granted. All objections were kept open.

14. The Petitioner then filed this Petition.

15. Now this is the background. If I am to summarize it: from the beginning the Petitioner knew the fees that had to be paid. The Petitioner knew that the procedural order required advance

intimation of any cancellation of the meeting. Conceivably, this was because at least one of the arbitrators would have to travel to Mumbai from another city. The Petitioner admittedly paid some amounts. The Petitioner then cancelled or got adjourned several hearings. The arbitral tribunal in its discretion directed the Petitioner to bear those costs alone. The Petitioner successively filed applications to reverse those orders. Those orders have not been reversed. The last order was conditional giving the Petitioner four weeks' time to deposit the amount, failing which the mandate in respect of the Statement of Claim would stand terminated. The Petitioner moved this Court under Section 14. The Petitioner withdrew the Section 14 Petition. It filed a third application before the arbitral tribunal. It sought an adjournment before the arbitral tribunal and has now filed the Section 29-A Petition.

16. Mr Kapadia points out that the minutes of 15th January 2019 indicate in paragraph 10 that the Petitioner had instructed his Advocate to state to the tribunal that the costs of the arbitration (for the six adjourned dates or adjournments) would be paid by the Petitioner in accordance with the procedural orders already made.

17. Of course this statement is one that the Petitioner has since sought to resile from before the tribunal. I note that this question itself, i.e. of the Petitioner through the person who has affirmed the present Petition, Ashish Garodia, having agreed to pay the costs as mandated earlier for the six occasions came up before the Tribunal on 25th February 2019. At that time, somebody else, one Mondal, claiming to be an authorized representative of the Petitioner, filed an affidavit saying that Garodia had agreed to make that payment at a

time when Garodia was in a 'disturbed and weak state of mind'. As the tribunal correctly points out how Mondal can say this as a matter to his personal knowledge is unclear. In any case, none of this will assist the Petitioner.

18. The first prayer is simpliciter for an extension of time of 12 months to make an Award. That more or less begs the question. The arbitral mandate for the Statement of Claim has in fact been terminated and there is no question of extending time simpliciter. It is not as if the mandate has ended by efflux of time, in which case a Court would extend the time. There is a failure to comply with a direction resulting in a consequential termination of the mandate.

19. The second prayer set out above is poorly worded. It is one thing to say that the application must be considered on merits. It is quite another to describe the application before the tribunal as a Review Petition. The arbitral tribunal has no inherent power of review. I notice from pages 156-157 that the tribunal has merely adjourned the hearing of the Petitioner's third application only to enable the Petitioner to file the present Petition for an extension of time under Section 29-A. I am making no observations and returning no finding on the merits of the third application filed by the Petitioner before the tribunal.

20. Mr Samudrala relies on the decision of the Supreme Court in *SREI Infrastructure Finance Ltd v Tuff Drilling Pvt Ltd*.¹ This decision does not assist the Petitioner and might actually be against

1 (2018) 11 SCC 470.

him. All that the decision says is that the tribunal is not obliged to terminate proceedings under Section 25(a) even after the expiry of time under Section 23. Now Section 23 deals with the filing of statements of claim and defence. All that the decision says is that the claimant must be asked to show cause for default in filing the Statement of Claim within the stipulated time. If the claimant shows sufficient cause, the tribunal can recall its earlier order of termination of the proceedings.

21. In my view, in fact the correct order to be made on this Petition having regard to the fact that the Tribunal has only adjourned the Petitioner's third application is to make a conditional order within the meaning of Section 29-A(6). Thus: should the arbitral tribunal in its absolute discretion allow the Petitioner's third application, then time will stand extended for completion of the arbitral proceedings until 31st December 2020. This is further subject to the Petitioner agreeing and undertaking to comply with such conditions including as to payment of accumulated arrears of fees and additional costs as the tribunal may seek to impose as a condition precedent for the grant of relief on the Petitioner's third application (the one that is pending). If the Tribunal rejects the application, then time is not and shall not be deemed to have been extended. The purpose of this order is not to be mistaken. It is not intended to assist the Petitioner but solely and only to facilitate the arbitral tribunal should it decide to recall its earlier order of 15th January 2019 to the extent of terminating the arbitration in regard to the statement of claim. For, if it does so, undoubtedly the arbitral tribunal will need more time to deal with the statement of claim. I am making it clear, with respect, that the arbitral tribunal is not

bound to order any such recall; and that if it chooses to do so, it may also impose such conditions including additional costs, as it thinks fit.

22. In summary:

- (a)** The Arbitral Tribunal is requested to take up the Petitioner's third application, the one for recall of the 15th January 2019, on merits;
- (b)** The Arbitral Tribunal is not bound to grant that application. It may refuse it entirely or it may allow it conditionally, on such terms as it thinks fit, including (but not limited to) paying the arrears of fees, specifying the time within which they are to be paid, the costs of the present application, and any further costs. The Tribunal may also allow the application without conditions attached if it thinks fit.
- (c)** Should that application be allowed either conditionally or unconditionally, then time to complete the arbitration on the statement of claim will stand extended from 4th March 2019 until 31st December 2020.

23. The Petition is disposed of in these terms.

24. I decline Mr Kapadia's vehement entreaties that exemplary costs be imposed.

(G. S. PATEL, J)