

Shantanu

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 134 OF 2021

Bajaj Auto Limited

...Petitioner

Vs.

Sanjeev Kumar.

...Respondent

Mr. Mitesh Naik & Mr. Ronak Shah i/b Dhru & Co. for the petitioner.

None for the respondent

CORAM : G.S. KULKARNI, J.**DATE : 17 August, 2022.**

P.C.:

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 where by the petitioner has prayed for the appointment of an arbitral tribunal for adjudication of the disputes which have arisen between the parties under the Dealership Agreement dated 7 September, 2017 and Dealership Agreement dated 30 June, 2020. As the subject matter of both the agreements is common it is being pursued in this single petition. The respondents are served. M/s. Siddh Vidya & Associates have filed Vakalatnama on behalf of the respondent, however, the respondent is not represented, despite a second call.

2. The petition cannot be adjourned and would be required to be taken up for hearing being filed on 27 October, 2021, considering the orders passed by the Supreme Court in **Shree Vishnu Constructions vs. The Engineer in Chief Military Engineering Service & Ors.** in SLP © No. 5306 of 2022 dated 19 May, 2022

3. The Arbitration Agreement between the parties in the first agreement dated 7 September, 2017 is contained in clause 24. In so far as the second agreement dated 30 January 2020 is concerned the same

is contained in clause 24 of the said agreement. The petitioner by its notice dated 15 September, 2021 and thereafter, by the second notice dated 12 October 2021 invoked the arbitration agreement and called upon the respondent to refer the disputes and differences which have arisen between the parties for adjudication by appointing an arbitral tribunal. The nature of the dispute was also set out in the said notice. The petitioner also suggested the name of the proposed arbitrator. However, the respondent did not accept the nomination of the arbitrator as suggested by the petitioner. The stand taken by the respondent as seen from the reply of the respondent to the invocation notice Exhibit 'J' is that the agreement itself was terminated and therefore the arbitration clause would not survive. Such a position would be completely contrary to the well settled Principles of Law as laid down by the Supreme Court the refer to for an High Court process (**See: Firm Ashok Traders v. Gurumukh Das Saluja, 2004 AIR SC 1433 : Vidya Drolia & Ors. vs. Durga Trading Corporation¹ and M/s. N. N. Global Mercantile Pvt. Ltd. vs. M/s. Indo Unique Flame Ltd. & Ors.²: Duro Felguera S.A. Vs. Gangavaram Port Ltd., reported in (2017) 9 S.C.C. 729; M/s.Mayawati Trading Pvt.Ltd. Vs. Pradyut Deb Burman, (2019)8 SCC 714**).

4. It appears that apart from such a contentions, the respondent did not dispute the existence of the arbitration agreement. As the respondent did not consent in appointment of an independent arbitral tribunal the present proceeding is filed.

5. No reply affidavit has been filed thus the averments as made in the petition are required to be taken as un-controverted. It clearly appears that there exists an arbitration agreement between the parties as noted above as also there is a lawful invocation of the Arbitration Agreement. Also the parties could not mutually appoint an Arbitral Tribunal. Hence, there are sufficient requirements for this Court to

exercise jurisdiction under Section 11 (6) of the Arbitration and Conciliation Act, to appoint an arbitral tribunal for adjudication of disputes and differences which have arisen between the parties.

6. Accordingly, the petition is disposed of, by the following order:-

ORDER

(I) Smt. Dr. Justice Shalini Phansalkar-Joshi, Former Judge of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Dealership Agreement 7 September, 2017 and Dealership Agreement 30 June, 2020. ;

(ii) The learned prospective sole arbitrator, before entering the reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar (Judicial) of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties;

(iii) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

(iv) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(v) All contentions of the parties are expressly kept open;

(vi) The petition is disposed of in the above terms. No costs.

(vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

Bungalow No.12,
Bhagya Chintamani Nagar,
Poud Road, Kothrud,
Pune-411038.
Mob.: 9657188676
E-mail : phansalkarjoshi@gmail.com

[G.S. KULKARNI, J.]