

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.218 OF 2021**

M/s. Kajaria Ceramics Limited ..Applicant
Vs.
D C Autosoft Private Limited ..Respondent

Mr. Dhananjay Athavale for Applicant.
Mr. Rohan Agrawal with Mr. Ativ Patel, Mr. Darshit Dave and Mr.
Harshad Vyas i/b. AVP Partners for Respondent.

**CORAM : G.S. KULKARNI, J.
DATE : MARCH 23, 2022.**

P.C.:

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) whereby the applicant has prayed for appointment of an arbitral tribunal for adjudication of the disputes and differences between the parties arising under the Agreement as entered between the parties on 29 May, 2019.

2. The agreement concerns modification and interior work of a vehicle Tempo Traveler of the applicant. An amount of Rs.45,95,200/- was paid by the applicant to the respondent for the costs of such modification and interior work as also the vehicle was handed over to the respondent in July, 2019. The case of the applicant is that the applicant is yet to receive the vehicle with all the contractual work being executed by the respondent. It is the applicant’s case that consequently, a serious prejudice has been caused to the applicant, having parted with not only substantial amounts, but the applicants have also suffering loss of business, as also the value of vehicle has also depreciated since it was handed over to the respondent. In these circumstances, the applicant invoked the arbitration agreement in terms of its letter dated 10 February, 2021.

3. Learned counsel for the respondent fairly states that there is an arbitration agreement as subsisting between the parties. He, however, submits that his client is inclined to explore a possibility of a without prejudice settlement. Mr. Athavale, learned counsel for the applicant would not be averse to any settlement, he would however submit that the appointment of the arbitral tribunal can still proceed and parallelly, the settlement talks can also happen.

4. In the above circumstances, in my opinion, this application need not to be kept pending, even if any settlement is to be explored as suggested on behalf of the respondent. This, more particularly, as there exists an arbitration agreement as also there is an invocation of the arbitration agreement by the applicant. However, accepting the contention as urged on behalf of the respondent, some time period for the parties to explore any settlement, needs to be kept open. The arbitral tribunal can thus enter reference after some time. Accordingly, in the event an attempt to settle the disputes fails within a period of 30 days from today, the arbitral tribunal can enter reference.

5. The application is accordingly disposed of by the following order:-

ORDER

(i) Mr. Anoshak Daver, Advocate of this Court, is appointed as the sole Arbitrator to arbitrate the disputes and differences between the parties under the Agreement dated 29 May, 2019;

(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 Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be

forwarded to both the parties;

(iii) The arbitral tribunal shall enter reference after a period of 30 days from today, so that in the meantime, the parties may explore the possibility of a settlement.

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

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

(vi) The application 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:

“Address: 46-C, Prospect Chambers Annex, Pitha Street,
Mumbai – 400 021.

Mobile No. 9833098777

E-mail: anoshakdaver@hotmail.com ”.

[G.S. KULKARNI, J.]