

Prajakta Vartak

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

COMMERCIAL ARBITRATION APPLICATION NO. 156 OF 2021

Madhuban Motors Pvt. Ltd.	..Applicant
Vs.	
SMS Taxicabs Pvt. Ltd.	..Respondent

Ms. Kshitija Bhosale i/b. SSB Legal & Advisory for Applicant.

**CORAM : G.S. KULKARNI, J.
DATE : FEBRUARY 08, 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 to adjudicate the disputes and differences which are stated to have arisen between the parties under the Service Level Agreement (for short, “the agreement”) as entered between the parties on 01 November, 2015.

2. This Court (B. P. Colabawalla, J.) had earlier considered the present application on 21 September, 2021. In paragraph 2 of the said order, the Court noted a statement as made on behalf of the applicant that the respondent was duly served as evidenced by the affidavit of service dated 30 July, 2021. However, the applicant was permitted to serve the respondent afresh by hand delivery as well as by email as also by filing an affidavit of service before the next date with a clarification

that if the respondent does not appear on the next date despite service, the Court shall proceed to pass orders in their absence. In pursuance of such order, an affidavit of service of Mr. Satish Shirke dated 27 September, 2021 has been placed on record evidencing service on the respondent. However, despite service the respondent is not represented. It appears that the respondent is not interested to contest the present proceedings.

3. The relevant facts are :- Under the agreement in question, the applicant was servicing the vehicles of the respondent and was raising invoices from time to time. A perusal of the record would indicate that there is an arbitration agreement between the parties as contained in clause 9 of the said agreement. In clause 10 of the said agreement, the parties have agreed that all disputes arising out of the said agreement shall be subject to the exclusive jurisdiction of the Mumbai Courts. Clauses 9 and 10 of the said agreement are required to be noted which read thus:-

“9. ARBITRATION, APPLICABLE LAW AND JURISDICTION

This Agreement shall be construed in accordance with laws of India. Any dispute or difference arising between the Parties shall be in the first instance be settled through mutual discussions between the Parties. Failing which within a period of thirty (30) days from the first written notice of dispute from either Party, all such disputes shall be referred and settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any subsequent modifications, amendments thereto and shall be referred to two arbitrators, one to be appointed by service receiver and the other Service

providers. These two arbitrators shall appoint a third arbitrator who shall act as the presiding arbitrator. Arbitration Award shall be final and binding on both the Parties to this Agreement. The venue of the arbitration proceedings shall be at Mumbai. Subject to the above the Parties submit themselves to the exclusive jurisdiction of Mumbai only.

10. **EXCLUSIVE JURISDICTION:**

All disputes arising out from this agreement shall have exclusive jurisdiction of Mumbai courts.”

4. Learned counsel for the applicant has drawn the Court’s attention to the Payment Outstanding Note dated 31 March, 2017 issued by the applicant to the respondent whereby an amount of Rs.45,46,191/- was set out to be outstanding and payable by the respondent. Such Payment Outstanding Note was duly confirmed by the respondent under the stamp and signature of its authorized signatory as set out below the document under the heading “Outstanding Confirmation”. Such confirmation was issued by respondent no.1 on 05 April, 2017. Thereafter the applicant addressed several reminders to the respondent to make payment of the said outstanding amounts. However, none of these letters issued by the applicant were responded. Finally the applicant through its advocates issued a legal notice dated 08 September, 2020 which was also not responded. Accordingly, the applicant by its advocate’s notice dated 27 April, 2021 invoked the arbitration agreement by nominating its arbitrator, and called upon the respondent to refer the disputes for adjudication by appointing an arbitral tribunal. As the said notice was also not responded, the

applicant has filed the present application.

5. It clearly appears that there is an arbitration agreement between the parties as contained in clause 9 as noted above. Perusal of the notice addressed on behalf of the applicant to the respondent dated 27 April 2021 indicates that there is an appropriate invocation of the arbitration agreement calling upon the respondent to nominate its arbitrator for constituting an arbitral tribunal.

6. On the earlier occasion on 03 February, 2022 while adjourning the hearing of this application, the Court had observed that prima-facie it appears that the claim of the applicant pertains to the year 2017 and the invocation notice itself is dated 27 April, 2021. The Court accordingly observed that the applicant would be required to point out that the application is not ex-facie barred by limitation.

7. Learned counsel for the applicant has accordingly argued today. She has drawn my attention to the Payment Outstanding Note as confirmed by the respondent on 05 April, 2017. She has also drawn my attention to the fact that the limitation for the applicant otherwise would come to an end sometime in April 2020, as also to the fact that this application was filed on 22 July, 2021. She would however submit that not only the claim of the applicant but also the present application

is within limitation considering the orders passed by the Supreme Court on 23 March, 2020 and followed by subsequent orders dated 23 September, 2021, 08 April, 2021 and the last order dated 10 January, 2022 passed in Suo Motu Writ Petition (Civil) No(s).3/2020 in **Re Cognizance for Extension of Limitation**. Learned counsel for the applicant would contend that considering the situation of pandemic due to Covid-19 ,the Supreme Court by such orders passed from time to time extended the limitation prescribed under the general law of limitation or special laws to file petitions/ applications/suits/appeals/all other proceedings which may not be filed due to difficulty that may be faced by the litigants on account of Covid-19 pandemic. In my opinion, the applicant has correctly relied on such orders passed by the Supreme Court in contending that the present proceedings are within limitation.

8. In the aforesaid circumstances, the application would be required to be allowed by appointing a nominee arbitrator for the respondent as an arbitrator on behalf of the applicant is being nominated. The nominee arbitrator for the respondent as appointed by the Court as also nominee arbitrator appointed by the applicant, can appoint a presiding arbitrator for constituting an arbitral tribunal, to adjudicate the disputes and differences which have arisen between the parties under the said agreement.

9. At this stage, learned counsel for the applicant submits that the applicant would intend to nominate Mr. Rohan Sawant, Advocate of this Court as a nominee arbitrator on behalf of the applicant.

10. In view of the above discussion, the application is required to be allowed. It is accordingly allowed by the following order:-

ORDER

(i) Mr. Rohan Sawant, Advocate of this Court has been nominated by the applicant as its nominee arbitrator.

(ii) The Court appoints Ms. Jui Kanade, Advocate as a nominee arbitrator for the respondent.

(iii) The respective nominee arbitrators shall proceed to appoint a presiding arbitrator so as to constitute an arbitral tribunal, to adjudicate the disputes and differences between the parties under the Service Level Agreement dated 1 November 2015 as entered between the parties.

(iv) The arbitral tribunal 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;

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

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

- (vii) All contentions of the parties are expressly kept open;
- (viii) The application is disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]

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