

Prajakta Vartak

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

ARBITRATION APPLICATION NO. 287 OF 2021

Tata Motors Finance Limited ..Applicant
Vs.
Mr. Rangabashyam S. & Anr. ..Respondents

COMMERCIAL ARBITRATION PETITION NO. 616 OF 2021

Rangabashyam S. & Anr. ..Petitioners
Vs.
Tata Motors Finance Limited ..Respondents

Ms. Shraddha Dube Patil with Ms. Sheetal Raghani i/b. M/s. Jay & Co.
for Applicant in ARBAP No.287/21.
Ms. Bency Ramakrishnan i/b. Mr. Akash Menon for Respondents in
ARBAP No.287/21 and for Petitioner in CARBP No.616/21.
Mr. Suryajeet Chavan with Mr. Shyam Singh i/b. One Legal Bay LLP for
Respondents.

**CORAM : G.S. KULKARNI, J.
DATE : MARCH 25, 2022.**

P.C.:

1. These are two proceedings. Arbitration Application No. 287 of 2021 is filed under Section 11 read with Section 15 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") whereby the applicant-Tata Motors Finance Limited, has prayed for appointment of an arbitral tribunal to adjudicate the disputes which have arisen between the parties under the four Loan-cum-Hypothecation-cum-Guarantee Agreements dated 11 May, 2019 and 24 May, 2019. The arbitration agreement between the parties is contained in clause 21.1 of the agreements in question. There is no dispute in regard to the existence of the arbitration agreement.

2. Learned counsel for the respondents would also not have any objection for the disputes and differences between the parties being referred for adjudication by appointing a sole arbitrator. Thus, on the proceedings of this application, the Court can proceed to pass an order appointing an arbitral tribunal.

3. There is a companion proceeding i.e. Commercial Arbitration Petition No.616 of 2021 filed by the respondents-Mr. Rangabashyam S. & Anr., which is filed under Section 37 of the Act whereby an order dated 10 March, 2021 passed by the learned sole arbitrator Mr. Girish Thanvi allowing an interim application under Section 17 of the Act filed by the applicant-Tata Motors Finance Ltd. is assailed. The challenge is on the ground that the appointment of the learned sole arbitrator Mr. Girish Thanvi was not in accordance with the provisions of the Act and in as much as, it was an unilateral appointment. It is contended that a consent from the respondents-Mr. Rangabashyam S. & Anr. to make the appointment of the said sole arbitrator was not obtained.

4. Learned counsel for the applicant-Tata Motors Finance Ltd. would not dispute that the appointment of the learned sole arbitrator was an unilateral appointment and that it may not satisfy the test of law and more particularly considering the decision of the Supreme Court in **Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd.**¹. She would hence fairly submit that the proceedings as adopted by her client before the learned sole arbitrator can be said to be without jurisdiction. She would also submit that in view of the Section 11 application now filed on behalf of the applicant-Tata Motors Finance Ltd., this petition filed under Section 37 of the Act by the respondents-Mr. Rangabashyam

1 2019 SCC OnLine SC 1517

S. & Anr. would be required to be allowed, as the parties shall now be appearing before the learned substitute arbitrator who would now be appointed by this Court.

5. In the above circumstances, both the proceedings would be required to be disposed of as there is no dispute that the arbitral proceedings are required to be re-commenced before the substitute arbitral tribunal, which would now be appointed by this order. Hence the following order:-

ORDER

- (i) The mandate of the learned sole arbitrator Mr. Girish Thanvi to adjudicate the disputes and differences which have arisen between the parties under the agreements in question, stands terminated by consent of the parties.
- (ii) The impugned order dated 10 March, 2021 passed by the learned sole arbitrator Mr. Girish Thanvi under Section 17 of the Act shall stand set aside.
- (iii) Ms. Tanmayi Rajadhyaksha, Advocate of this Court, is appointed as a substitute Arbitrator to adjudicate the disputes and differences between the parties under the agreements in question;
- (iv) The learned substitute arbitrator, fifteen days before entering the arbitration 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 these proceedings with a copy to be forwarded to both the parties;
- (v) It is open for the parties to move such appropriate application under Section 17 of the Act to claim the interim reliefs before the substitute arbitrator. All contentions in that regard are expressly kept open.

(vi) It is pointed out on behalf of the applicant-Tata Motors Finance Ltd. that four vehicles in question are in possession of the applicant. It is clarified that if the respondents intend to seek any orders in regard to the re-claiming possession of the vehicles, they are free to make an appropriate application before the learned substitute arbitrator and which shall be decided on its own merits.

(vii) At the first instance, the parties shall appear before the substitute arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(viii) The applicant shall file its Statement of Claim before the learned substitute arbitrator within a period of two weeks after the learned substitute arbitrator entering reference.

(ix) All contentions of the parties on merits of the matter are expressly kept open;

(x) Both the proceedings are disposed of in the above terms. No costs.

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

“Address: 58-B, Alli Chamber, Tamarind Lane, Fort,
Mumbai – 400 001.

Mobile No. 9821195130

Email ID: tanmayi.gadre@gmail.com”

[G.S. KULKARNI, J.]