

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

## COMMERCIAL ARBITRATION APPLICATION NO.17 OF 2022

Tata Capital Financial Services Ltd. ..Applicant  
Vs.  
M/s.Janata Tractors & Ors. ..Respondents

Mr.Rajeev Carvalho with Ms.Jyoti Ghag, Mr.Deeshank Doshi i/b. Dua Associates, for the Applicant.

CORAM : G.S. KULKARNI, J.  
DATE : JUNE 27, 2022.

PC.:

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 and under the Channel Finance Agreement and a letter of guarantee both dated 10 March 2016. The arbitration agreement in the Channel Finance Agreement is contained in Clause XV (page 58) and in the letter of guarantee at Clause 29. The respondents are signatories to both the agreements in question.

2. Earlier there was invocation of the arbitration agreement by the applicant by an invocation notice dated 31 May 2018. However, the invocation notice itself was withdrawn as the respondents had shown an inclination to settle the disputes. However, the settlement talks did not succeed. Eventually another invocation notice dated 30 August 2019 came to be issued by the applicant to the respondent setting out details of the disputes and by which the respondents were also called upon to appoint an arbitral tribunal to adjudicate the disputes and differences which have arisen between the parties,

namely the amounts due and payable under the agreements in question, payable on account of default and the interest thereon as payable by the respondents to the applicant. In these circumstances, the present application came to be filed.

3. Mr.Carvalho , learned Counsel for the applicant would submit that the prayers (a) and (b) to the application are misplaced, hence, not pressed. Hence, the only prayer which survives today is prayer clause (c) which is for appointment of a sole arbitrator to resolve the disputes and differences between the parties under the agreement and the letter of guarantee in question.

4. This application was moved before this Court on 9 February 2022, 10 February 2022. Affidavits of service dated 21 October 2021 and 2 March 2022 are placed on record. The second affidavit is in pursuance of the prayer of the applicant being granted by this Court in the Interim Application (lodg) No.4840 of 2022 whereby the applicant was permitted to serve the respondents by publication, as earlier attempts to serve the respondents had failed. Accordingly, by such affidavit of service the applicant has placed on record the publication of the notice in two local newspapers, one in English newspaper (Indian Express) and another in vernacular newspaper (Seem Sandesh) both published at Jaipur. It is thus clear that although the service of the present proceeding is effected on the respondents, the respondents are not represented.

5. The application is accordingly heard. As there is no opposition to the application and as no reply affidavit has been filed, the averments made in the application are required to be taken to be not in dispute. It is clear that there is an arbitration agreement in so far as the documents are concerned, as noted above. There is also a lawful invocation of the arbitration agreement. Mr. Carvalho, learned Counsel for the applicant has also made a statement that earlier Mr.Vivek M.Sharma was sought to be appointed as a sole arbitrator

who did not accept to act as an arbitrator. The arbitral proceedings hence did not commence. In these circumstances, the application is required to be allowed. Hence, the following order:

**ORDER**

- (i) Mr. M. P. S. Rao, Senior Advocate is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Channel Finance Agreement and a letter of guarantee both dated 10 March 2016.
- (ii) The learned sole arbitrator, 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 this application with a copy to be forwarded to both the parties;
- (iii) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;
- (iv) The fees payable to the arbitral tribunal shall be the fees 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:

Mr.M.P.S.Rao, Senior Advocate  
56-A, 4<sup>th</sup> floor, Ali Chambers,  
Tamarind Lane, Fort, Mumbai.  
Mobile: 9820040932  
E-mail: mpsrao@hotmail.com

[G.S. KULKARNI, J.]