

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO.217 OF 2022

Mahindra & Mahindra Financial Services Ltd.] .. Applicant

vs.

Sunil Goyal & Anr.] .. Respondents

Ms.Priya Crasto, for the Applicant.

Mr.Akshay Nair i/b Prakash Rohira for Respondent Nos.1 and 2.

CORAM : BHARATI DANGRE, J

DATE : 7th JANUARY, 2023.

P.C.

1] By Order dated 08.12.2022, Mr.Srinivas Deshmukh was appointed as Sole Arbitrator to resolve the disputes and differences between the parties arising out of the 'Inventory Funding Agreement' dated 06.12.2016.

The Agreement contemplated that the borrower will avail and the lender shall grant loan as 'Inventory Funding' for the purpose of purchasing the Vehicle from the Manufacturer vide a sanctioned letter. It also involve two Guarantors, being the Directors of the Borrower.

2] It is informed that the Applicant, in the earlier round had impleaded even the Guarantor as party Respondents, but since arbitration was not invoked against them, liberty was granted to the Applicant to invoke arbitration and then approach the Court.

As a consequence after invocation of the arbitration, order was passed under Sub Section(6) of Section 11 of the Act, of 1996, and Mr. Srinivas Deshmukh was appointed as Arbitrator.

It is pertinent to note that he is also appointed as sole arbitrator to adjudicate the claim against principal borrower.

3] The learned counsel representing Guarantors submit that though two different disputes are made over to the arbitrator by separate orders passed by this Court, in fact, they arise out of the same transaction of loan agreement, therefore, evidence which is to be led, would be common. The respective counsel would submit that while granting both the Applications, the Court has allowed separate fees to the learned Arbitrator as per 4th Schedule of the Arbitration and Conciliation Act.

Instead, request is made by the parties that the Arbitrator shall fix up the fees as per the volume of work, which he has to undertake for dealing with the disputes between the Applicant and Borrower on one hand and Applicant and Guarantors on the other. In any case, he shall not be entitled for two set of fees as per Schedule 4 is the submission. In my view, if the Arbitrator is given discretion to fix the fees, he can preferably reduce the fees by taking into consideration that the two proceedings arise of the same agreement and are inter linked together.

4] Hence, I deem it appropriate to modify clause (g) of the order dated 08.12.2022, which shall now read as under :

(g) Fees : The Sole arbitrator shall be entitled to fix the fees taking into account that he is adjudicating the claim of the Applicant as

against the Borrower and Guarantors, and dispute has arisen out of the same 'Inventory Funding Agreement', as well as the sanction letter.

The learned Arbitrator shall be conscious of the fact arbitral proceedings arise of the same transaction and common evidence will be recorded by him for the same.

I also deem it appropriate to leave it to the discretion and good conscious of the learned Arbitrator to determine the fees that are affordable to both the sides, though he is entitled to fix the fees as per 4th Schedule of Arbitration and Conciliation Act.

CARAP No.217/22 is disposed off.

[BHARATI DANGRE, J]