



Gaikwad RD

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**ARBITRATION PETITION NO.126 OF 2022**

Kirloskar Oil Engines Ltd.

...Applicant

*Versus*

M/s. Siva Sivani Industries

...Respondent

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Ms. Naveena Kumai for the Applicant.

None for the Respondent.

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CORAM Dr. Neela Gokhale, J.

DATED: 3rd October 2023

**PC:-**

1. The Applicant seeks appointment of a sole arbitrator in terms of the arbitration clause contained in the terms and conditions of the appointment letter dated 3<sup>rd</sup> July 2018, which is a contract of dealership, with terms and conditions forming part of the contract.

2. By order dated 7<sup>th</sup> September 2021, the Advocate for the Applicant was directed to serve the Application along with a copy of the order of same date by registered post with acknowledgement due. On 5<sup>th</sup> October 2021 when the matter was called out, none appeared for the Respondent. The Counsel appearing for the Applicant brought to the attention of this Court the fact that attempts were made to serve the Respondents as directed by the

Court, but the packet was returned with the remark 'left'. It is also brought to the notice of this Court that public notice was issued by the Applicant informing the public that the Respondent is deceiving the general public by collecting advance payment for supply of the Applicant's product. The Applicant also declared in the notice that neither the Applicant nor any of its Channel partners has received any advance payments from the said parties for supply of their products. It was the contention of the Applicant that the Respondent was deliberately keeping out of way and avoiding service.

3. Considering the above, by order dated 5<sup>th</sup> October 2021, this Court had directed the Respondent to be served by substituted service as contemplated under Order V Rule 20 of the Code of Civil Procedure. Accordingly, service was effected by issuing a public notice and affixing a copy of the notice with the Application copy on a conspicuous part of the last known address of the Respondent. By order dated 13<sup>th</sup> January 2023, this Court had once again issued notice for final disposal returnable on 28<sup>th</sup> February 2023. The Applicant was also permitted to serve the Respondent by way of private notice through all permissible modes of communications. The Petitioner has taken steps to serve the Respondent and has also placed on record the affidavit of service stating that the copy of the Petition which was to be served by speed post has also returned with a remark 'addressee left'. The Respondent has not appeared before this Court despite notice by this court as well as private notice by the Applicant.

4. Heard the Counsel for the Applicant.
5. The Applicant is a Company engaged in the business of manufacturing and supply of diesel engines, power generating sets, engines, pump-sets, agricultural equipments and their parts, etc.
6. By letter dated 3<sup>rd</sup> July 2018, the Petitioner appointed the Respondent as their KOEL Green Dealer ('**KGD**'). According to the letter of appointment, the term of the dealership was with effect from 1<sup>st</sup> April 2018 and was to remain valid unless terminated by either party in accordance with Clause 25 of the terms and conditions accompanying the appointment letter.
7. Paragraph No.31 of the terms and conditions forming part and parcel of the appointment letter provides an arbitration clause. It reads as under:

*"31. ARBITRATION:*

*Any dispute or difference arising under or in connection with this Appointment or any breach thereof, which cannot be settled by friendly negotiation and Appointment among the parties, shall be finally settled by arbitration. The appointment of arbitrator/s and arbitration proceedings shall be held in Pune and a sole Arbitrator, mutually appointed by the Parties, shall conduct and decide the arbitration proceeding. As the jurisdiction shall be at Pune, the arrangement and transaction will be subject to Pune jurisdiction only and the arbitration agreement and the arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996. It is explicitly agreed between the Parties that any such arbitration proceeding*

*shall be concluded within 6 (six) months from the date of 1<sup>st</sup> arbitration sitting / meeting.”*

8. Ms. Kumai. Counsel for the Applicant contends that the Applicant received complaints against the Respondent that the Respondent was receiving and accepting money from various customers on the pretext of supply of KOEL manufactured power generating set (Gen-set) and despite receiving money the Respondent failed to supply the product to the customers till date. Thus, according to the Applicant, the Respondent had intent to deceive unsuspecting customer and damage Koel's goodwill and reputation in the eyes of the general public and its own customers.

9. Considering the grievance of the Applicant, a notice dated 24<sup>th</sup> July 2020 was issued to one Saginala Praveen Sagar, proprietor of the Respondent invoking the arbitration clause with a request to refer the dispute to arbitration. The name of an arbitrator was also proposed in paragraph No.9 of the said notice. There is no response from the Respondent till date. Hence, I pass the following order:

### **ORDER**

1. Shri Rohan Vijay Nahar, Advocate is appointed as a Sole Arbitrator to enter reference and adjudicate the disputes between the parties out of the Dealership Agreement dated 25th April 2014. The seat and venue of the arbitration shall be Pune.
2. The learned Sole Arbitrator shall forward a statement of disclosure as per the requirement of Section 12(1) of

Arbitration and Conciliation Act 1996 to the Prothonotary and Senior Master of this Court to be placed on record of this Petition with a copy forwarded to both the parties.

3. At the first instance the parties shall appear before the learned Arbitrator within a period of ten days from the date of uploading of this order or on such date that may be fixed by the Sole Arbitrator.
4. All contentions of the parties on merits of the disputes are expressly left open.
5. The fees payable to the Arbitral Tribunal shall be in accordance with the Bombay High Court (Fee payable to the Arbitrator) Rules, 2018 which shall be borne by the parties in equal proportion.
6. The Petition is disposed of in the above terms. There will be no order as to costs.
7. Office to forward a copy of this order to the learned Sole Arbitrator on the following address:

**"Shri Rohan Vijay Nahar, Advocate,  
"SHANTI", 1202/3/20,  
Shivaji Nagar, Off. Ghole Road,  
Near Deccan Rendezvous,  
Pune-411004,  
Mobile No: 9822043854,  
E-mail: rohanvnahar@gmail.com"**

**(Dr. Neela Gokhale, J)**