

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 133 OF 2022

Bajaj Auto Limited

...Petitioner

Versus

T and R Auto Private Limited & Ors.

...Respondents

* * *

- Mr. Mansi Chheda i/by Dhru & Co., for Petitioner.
- Mr. Jamshed Ansari, for Respondent.

* * *

CORAM : MANISH PITALE, J

DATE : 04th JANUARY, 2023.

P. C. :

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator in the context of a Dealership Agreement executed between the parties. Clause 24 of the said agreement provided for resolution of disputes by Arbitration.

2. The learned Counsel for the Petitioner points out that disputes indeed arose between the parties, as a consequence of which, by notice dated 18th April, 2022, the Petitioner invoked the Arbitration Clause. On 28th April, 2022, the Respondents sent a reply through their Advocate stating that the sole Arbitrator proposed on behalf of the Petitioner could not be appointed.

3. In this backdrop the present petition came to be filed in which notice was already issued and the Respondents have appeared

through Counsel.

4. The learned Counsel appearing for the Respondents invited attention of this Court to paragraph no. 5(a) of the petition and submitted that even according to the Petitioner, the Respondent No. 2 could not have signed the agreement in question as Director of the Respondent No. 1 – Company. On this ground it was submitted that the present petition is not maintainable. It was further submitted that in any case Respondent No. 3 is not even a signatory to the agreement and therefore, he could not be sent for Arbitration when the real dispute sought to be raised by the Petitioner appears to be against the Respondent No. 1.

5. In response, learned Counsel for the Petitioner submits that the notice invoking Arbitration was addressed to all the three Respondents and reply was also received on their behalf, thereby indicating that there is no substance in the contention raised on behalf of the Respondents.

6. This Court has perused the Dealership Agreement in question. It appears to be signed by Respondent No. 2 for and on behalf of Respondent No. 1. Respondent No. 3 has nowhere signed the said document. The question as to what will be the effect of the stand taken by the Petitioner in paragraph no. 5(a) of the petition can

be left open for determination during the course of Arbitration, but, there is substance in the contention raised on behalf of the Respondents that since the Respondent No. 3 is not even a signatory to the said agreement, he could not be joined as a party in the present petition in his personal capacity and he cannot be sent for Arbitration in that capacity.

7. In view of the above, this Court is of the opinion that the Petitioner has made out the case for appointment of Arbitration in terms of the Arbitration Agreement executed between the parties. But a perusal of the Arbitration clause shows that it is hit by Section 12(5) read with Schedule 7 of the said Act, for the reason that the clause provides for appointment of a sole Arbitrator by the Executive Director of the Petitioner. Such unilateral appointment of the Arbitrator is no longer permissible, unless the same is waived in writing by the parties. Therefore, this Court is of the opinion that a neutral Arbitrator can certainly be appointed. This Court is also of the opinion that Respondent No. 3, not being a signatory to the agreement, cannot be sent for Arbitration in his personal capacity.

8. At this stage, the learned Counsel appearing for the Respondents submitted that although the Arbitration Clause specifies Pune as the place of Arbitration, if the Petitioner does not have objection the Arbitration proceeding could be conducted at Mumbai.

The learned Counsel for the Petitioner, on instructions, submits that the Petitioner has no objection for the place of Arbitration to be Mumbai. Hence, it is recorded that despite the stipulation in the Arbitration Clause, the parties have agreed before this Court for the place of Arbitration to be at Mumbai. The learned Counsel for the Petitioner has suggested names of certain advocates practicing in this Court from which suitable advocate could be appointed as the sole Arbitrator. On going through the list, the learned Counsel appearing for the Respondents submitted that the name at Sr. No. 9 i.e. Mr. Akshay Kolse Patil, Advocate, can be appointed as an Arbitrator. Hence on joint request of the learned Counsel for the parties, Mr. Akshay Kolse Patil, Advocate practicing in this Court, is appointed as the sole Arbitrator. The details of the learned Arbitrator are as follows :

Mr. Akshay Kolse Patil,
14C, First Floor, Examiner Press Building,
Dalal Stree, Mumbai – 400 001.
Email : akshaykp@gmail.com

10. The learned Counsel for the parties undertake to inform the learned Arbitrator about the order passed today.

11. The learned Arbitrator is requested to communicate his consent and Disclosure Statement as per Section 11(8) r/w Section 12(1) of the said Act, within four weeks to the Registrar (Judicial) of

this Court.

12 The fees of the Arbitrator shall be as per Schedule IV to the Aforesaid Act.

13. The objection raised on behalf of the Respondents in the context of Respondent No. 2 is specifically kept open to be agitated before the learned Arbitrator. All other questions are kept open.

14. The petition stands disposed of.

(MANISH PITALE, J.)