

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ARBITRATION PETITION NO. 234 OF 2022**

Tata Capital Financial Services Limited ... Petitioner

vs.

Rivolta Auto Industries Private Limited and others ... Respondents

Ms. Nidhi Mistry a/w. Mr. Akshay Sawant, i/b. I. V. Merchant & Company for petitioner.

**CORAM : MANISH PITALE, J.**

**DATE : 15<sup>th</sup> DECEMBER, 2023**

**P.C. :**

1. By this petition filed under Section 14 and 15 read with Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner has approached this Court, seeking substitution of the sole arbitrator before whom the arbitral proceedings were pending.

2. This Court is informed that the arbitral proceedings were pending before the sole arbitrator and the last meeting took place some time in November 2017. Thereafter, no further meetings were held and due to Covid-19 pandemic, the arbitrator left Mumbai for his home state.

3. Thereafter, several attempts were made by the petitioner to contact the learned arbitrator, but there was no response. In this situation, the petitioner is constrained to approach this Court seeking termination of the mandate of the learned arbitrator and substitution of the arbitrator.

4. By an order dated 02.03.2023, this Court directed the petitioner to establish contact with the arbitrator and it was observed that the learned

arbitrator was expected to respond to the communication that would be addressed to him. Pursuant thereto, the petitioner reached out to the learned arbitrator by sending communications, including emails.

5. The petitioner placed on record an affidavit dated 02.05.2023 alongwith documents, to inform this Court that upon receiving email from the petitioner, the learned sole arbitrator responded by an email dated 22.03.2023. The learned arbitrator informed the petitioner that due to Covid-19 pandemic, he could not take up any professional work and that he has settled in his home state. He has specifically stated that he is not in a position to continue with the arbitration and he recused himself from the arbitration.

6. Considering the contents of the said email, this Court finds that the mandate of the said sole arbitrator stands terminated under Section 15(1)(a) of the said Act and that therefore, the petitioner has been able to make out sufficient grounds for seeking substitution of the arbitrator.

7. Respondent Nos.2 and 3 are the directors of respondent No.1, who have been duly served. Despite service, the respondents have chosen not to appear before this Court. Hence, this Court is inclined to allow the present petition.

8. Considering the nature of disputes between the parties, this Court is inclined to appoint an advocate practising in this Court as the substituted arbitrator.

9. Accordingly, Mr. Saurabh S. Pakale is appointed as the substituted arbitrator. The details of the learned arbitrator are as follows:

Elphinstone Building, 1<sup>st</sup> Floor,  
10, Veer Nariman Road,  
Fort, Mumbai – 400 023.

10. The petitioner undertakes to inform the learned arbitrator at the earliest about the order passed today.

11. The learned arbitrator is requested to submit his consent and disclosure statement in terms of Sections 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Prothonotary and Senior Master of this Court. The fees of the learned arbitrator shall be in terms of Fourth Schedule of the said Act.

12. The learned arbitrator shall proceed with the matter from the stage at which it was pending before the earlier arbitrator.

13. The petitioner is directed to place necessary documents and material before the substituted arbitrator appointed by this order. Needless to say, the substituted arbitrator shall put the respondents to notice before proceeding with the matter.

14. All questions are left open to be decided by the learned arbitrator.

15. The petition stands disposed of.

**(MANISH PITALE, J.)**

*Priya Kambli*