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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.62 OF 2022

FCA India Automobiles Pvt. Ltd.] .. Applicant

vs.

Wavess Cars Pvt. Ltd.] .. Respondent

WITH

ARBITRATION APPLICATION NO.65 OF 2022

FCA India Automobiles Pvt. Ltd.] .. Applicant

vs.

Thrust Motors Pvt. Ltd. CHADA Group.] .. Respondent

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Mr.Ajit Kapadia a/w Aditya Chitale, Prathamesh Bhosale and Sumedh Ruikar i/b MNSQ Legal for the Applicant.

Mr.Harmeet Oberoi (through VC) a/w Shreeya Pednekar i/b Akash Memon for the Respondent.

CORAM : BHARATI DANGRE, J

DATE : 5th January, 2024.

P.C.

1] Two Arbitration Applications filed under Section 11 of the Arbitration and Conciliation Act, but subsequently by way of amendment having been filed under Section 14 and 15 of the Act, seek substitution of the Arbitrator.

The Arbitration Applications filed seeking substitution were based on a communication from the Arbitrator dated 06.09.2021, informing

the parties that the Arbitrator is unable to proceed to South Mumbai on account of ill health and unable to attend the arbitral proceedings physically. Presuming the said communication to be a recusal two Applications were filed on 22.02.2022 praying for substitution of the Arbitrator. The Applications set out the chronology of events commencing from 10.08.2016 and by Judgment and order of this Court, Arbitration Petition was allowed and an Arbitrator was appointed.

2] When the mandate expired and extension of 6 months was prayed for, it was opposed and this resulted in filing of Arbitration Petition No.703/2017 by the Applicant under Section 13, 14 and 29A of the Arbitration and Conciliation Act 1996, challenging the refusal to grant the consent for extension of time to dispose off the proceedings the Arbitrator.

By order dated 12.02.2018, the extension as prayed for, is granted by specifically recording that though there is no time limit prescribed under Section 29A for making application for extension of time, the Petitioner having made an Application within reasonable time, 12 months extension was granted from the date of next meeting to complete arbitration proceedings. Para 37 of the said order made it clear that the order shall apply to all the three proceedings which are pending before the learned Arbitrator.

Thereafter, upon the arbitration having progressed and the period granted having expired, on two occasions necessary orders were sought by filing Petition under under Section 29A of the Act and on both the occasions, the extension is granted by order dated 08.03.2019 and the subsequent order dated 23.09.2019, for a period of 8 months. Accordingly, the Arbitrator continued with the arbitral proceedings and Minutes of Meeting dated 20.02.2020 are placed on record.

However, in the interregnum since the entire nation was grappled with the Covid pandemic, the Apex Court, in a suo moto petition in RE: Cognizance for extension of Limitation, passed necessary orders extending the period of limitation which expired during the period commencing from 15.03.2020 and ending on 28.02.2022 and this was also extended, in computing the period prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, alongwith the other statutes.

3] The learned counsel, therefore, submit that though an application for substitution of the Arbitrator was filed on 22.02.2022, based on the communication from the Arbitrator on 06.09.2021, and accordingly an affidavit is filed alongwith necessary material which include the orders granting extension as well as the order of the Apex Court, since there

was no clear indication whether communication dated 06.09.2021 would amount to recusal, but only when the Arbitrator, on 30.08.2023 addressed a further communication conveying that on account of health reasons he was unable to continue as an Arbitrator in the two arbitral proceedings and he sought recusal from the said proceedings and also indicated that the parties may apply to the Court for substitution of Arbitrator.

It is, in the wake of this communication, the reliefs are sought in the present Applications.

4] The learned counsel Mr. Oberoi would vehemently oppose the prayer in the applications and he would specifically blame the opponent/Applicant for the delay in taking appropriate steps and his further objection is that the Application is not filed in two arbitral proceedings, but it pertains to only one of the proceedings, and therefore there cannot be any automatic substitution in the other proceedings.

5] In the order passed on 12.02.2018, when the Arbitrator was granted 12 months extension to complete the arbitration proceedings, it was made clear that the order shall govern three arbitration proceedings, which were pending before the arbitral tribunal.

When the subsequent extension came to be granted on two occasions by this Court, the arbitration proceedings were continued by the Arbitrator based on these orders. Ultimately when the Arbitrator addressed a communication, when he specifically make reference to two arbitration proceedings and the present Applications are filed in respect of these two proceedings.

6] It is also specific contention of Mr. Oberoi that the order granting extension is not applicable to the three companies, as they are three distinct entities.

I have recorded the contention of the learned counsel, who has appeared OnLline and he is insisting upon recording his objections and he also specifically asserted that, if the Court is not recording his contentions then he will have to leave the meeting. When the order is being dictated he has conveniently chosen not to hear, his specific contention being recorded and dealt with by the Court and I do not deem to indulge him any further.

7] In the wake of the fact that three proceeding before the Arbitrator were proceeding hand in hand and when the extension was sought and granted by two orders of this Court, it was presumably for both the Arbitral proceedings and that if the specific reason that when the

Arbitrator recused himself, he made a specific mention of the two Arbitral proceedings before him.

8] In the wake of aforesaid, since I do not find merit and substance in the submission of Mr. Oberoi that there is delay in conduct of the arbitral proceedings as the period of exclusion as indicated by the Apex Court in the SuoMoto Petition was beyond the control of any of the parties and it is recently i.e. in the month of August 2023, the Arbitrator has clearly indicated to the parties about his recusal, I deem it appropriate to substitute the Arbitrator, to continue with the two arbitral proceedings pending before me.

Advocate Mr. Rohan Kelkar is appointed as a substitute Arbitrator. He shall conduct the proceedings *de novo* as if he is entering the reference for the first time.

In the wake of the above, Advocate Rohan Kelkar is appointed as Sole Arbitrator to adjudicate the disputes and differences that have arisen between the applicant and the respondent.

The Arbitrator shall, within a period of 15 days before entering the arbitration reference forward a statement of disclosure as contemplated u/s.11(8) r/w Section 12 of the Arbitration and Conciliation Act, 1996, to the Prothonotary and Senior Master of this Court to be placed on record.

The Arbitrator, shall after entering the reference fix the date of first hearing in the week commencing from 29/1/2024 and issue further directions as are necessary.

The Sole Arbitrator shall be entitled for the fees as per Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

All rights and contentions of the parties are kept open.

Arbitration Application Nos.62 of 2022 and 65 of 2022, stand disposed off in the aforesaid terms.

[BHARATI DANGRE, J]