
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.105 OF 2024

Aditya Birla Finance Limited .. Applicant
Versus
Aldiam Motors Private Limited and ors. .. Respondents

Mr. Vishal Maheshwari with Mr. Mihir Beradia i/by M/s VM
Legal, Advocates for the Applicant.
None for the Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : 12 SEPTEMBER, 2024.

PC :

1. This Application under Section 11 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) was filed on 28th March, 2022 in connection with disputes and differences relating to a Loan Agreement dated 24th November, 2016 and another Loan Agreement dated 30th March, 2017 (“**Loan Agreements**”), between the Applicant and Respondent No. 1. It is apparent that a Deed of Guarantee dated 30th March, 2017 has been executed by Respondents No.2 and 3 in favour of the Applicant in relation to performance of obligations by Respondent No. 1 under the Loan Agreements.

2. The Applicant invoked the arbitration way back on 5th February, 2022 proposing the name of an Arbitrator, to which there has been no reply. It is seen from the record that on 6th December, 2022, a Learned Single Judge of this Court took note of the fact that private service had been effected and granted leave for issuing a notice again.

3. It is seen from the record that the loans in question have been partly repaid and as such, the record shows that an Arbitration Agreement is in existence. Since the invocation took place way back on 5th February, 2022, i.e. more than two years ago, and it has already been noticed that service has been effected, I see no fruitful purpose being served by keeping the Application pending any further. It is now settled law that Section 11 Court must ascertain the existence of an Arbitration Agreement and all the aspects of the disputes are to be adjudicated before the Arbitral Tribunal.

4. In these circumstances, the Application deserves to be allowed, and consequently, the following order is passed:

- a. Justice (*Retired*) Anuja Prabhudesai, a former judge of this Court is hereby appointed as the Sole Arbitrator to adjudicate

upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above. The Learned Sole Arbitrator's contact particulars are set out below:-

Anuja Prabhudesai

Former Judge, Bombay High Court

106 Arcadia, First Floor

NCPA Marg

Nariman Point

Mumbai 400021

justiceanujaprabhudessai@gmail.com

- b. A copy of this Order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with the copy of this Order;
- c. The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Respondent;

- d. The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated by the Learned Sole Arbitrator, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;
 - e. The fees payable to the Learned Sole Arbitrator shall be governed by the Fourth Schedule of the Arbitration Act;
 - f. All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs; and
 - g. The parties have agreed that the venue and seat of the arbitration will be in Mumbai. It is clarified that it shall be open to the Arbitral Tribunal to conduct the proceedings online through electronic mode;.
5. This Application is accordingly *disposed of* in the aforesaid terms.

6. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on production by
fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]