

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 143 OF 2024

Sany Heavy Industry India Pvt Ltd

...Applicant

Versus

Pravin Sadanand Bhogale & Anr

...Respondents

Ms Bijal Gogri, i/b for the Applicant.

CORAM. ARIF S. DOCTOR, J

DATED. 26th September 2024

SHEPHALI
SANJAY
MORMARE

Digitally signed
by SHEPHALI
SANJAY
MORMARE
Date: 2024.10.03
09:59:37 +0530

PC:-

1. This Application is filed under Section 11 of the Arbitration and Conciliation Act 1996 arising out of General Terms for the Loan Facility dated 15th September 2020 and subsequently amended Facility Agreement dated 17th August 2021.

2. This Court has received from the Respondent an Affidavit by which the Respondent has *inter alia* stated that the vehicle for which the loan was taken, i.e., a JCB has been handed over to the Applicant. The Learned Counsel appearing on behalf of the Applicant confirms this fact. She however, submits that there is an outstanding amount due and payable.. It was in respect of this outstanding amount that Arbitration was invoked vide a notice dated 26th February 2024. Today, the Respondents though, served not appeared.

3. Hence given that, I am satisfied that there is an Agreement between the parties which contains an arbitration clause. There is no dispute today that has been placed before me regarding the existence of the Agreement or Arbitrability of the dispute.

4. Hence, I appoint Mr Nikhil S Karnavat, Advocate to act as a Sole Arbitrator to decide the disputes and differences between the parties on the following Terms and Conditions:

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr Nikhil S Karnavat, Advocate, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.

(b) **Communication to Arbitrator of this order:**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded.

(ii) The Advocates for the Applicant will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses.

Arbitrator Mr Nikhil S Karnavat, Advocate

Address 305, Om Chamber, 3rd Floor,
Above Panchali Hotel, JM Road,
Pune 411 005

Mobile 9011049049

Email karnavatnikhil@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Applicant will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.
- (f) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any

such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

- (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
 - (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
 - (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
 - (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
 - (j) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Pune
5. The application is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J)