

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPLICATION NO. 247 OF 2024

Hansa City Bus Services Mumbai Pvt Ltd Through ...Applicant  
Director

***Versus***

Brihan Mumbai Electric Supply Transport ...Respondent  
Undertaking

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 32729 OF 2024

SHEPHALI  
SANJAY  
MORMARE

Digitally signed by  
SHEPHALI SANJAY  
MORMARE  
Date: 2024.10.29  
12:04:15 +0530

**Mr Dhruva Gandhi**, with *Khushbu Chhajed, i/b MDP Legal*, for the  
*Applicant/Petitioner.*

**Mr Sumeet Palsuledesai**, *i/b MV Kini*, for the *Respondent.*

CORAM: ARIF S. DOCTOR, J  
DATED: 23rd October 2024

**PC:-**

1. The Petition is filed under Section 9 of the Arbitration and Conciliation Act 1996 and arises out of an Agreement entered into between the Petitioner and the Respondent for operating of stage

carriage services for public transport of 250 mini AC buses in the city of Mumbai and its extended suburbs.

2. Mr. Gandhi, Learned Counsel for the Applicant has invited my attention to the said Agreement and has placed reliance upon the following clauses of the said Agreement to point out that the ownership of the said buses was that of the Petitioner, viz.

*“15.7 Ownership of Bust Tire ownership of the Buses shall the name of during the period of the Agreement All the Buses shall be registered in the Operator.*

*15.8.2 It is hereby clarified that the Operator shall only have a limited right of way and right to use the parking space/plots/termini, in the manner stipulated by BEST and on termination, the Operator shall vacate and hand back such plot, parking spaces and/or termini as per the terms contained herein.*

Mr Gandhi, then submitted that said Agreement was terminated by the Petitioner on 9th October 2024 for *inter alia* the following reasons as set out in the termination notice, viz.

*“25. BEST has not convened any meeting to resolve the issues amicably, BEST has also not resolved any of the issues of the Operator. Therefore, the operator sent a reminder letter dated 29/02/2024.*

*26. Even after lapse of more than 6 months from the date o the above notices, BEST has not cured the defaults on its part. It did not even convene a single meeting to address much less resolve the issues of the operator. The defaults on part of the BEST have persisted. The losses incurred by the Operator on account of the defaults on part of the BEST have only mounted. This has rendered it impossible for the*

*Operator to continue providing services under the Agreement. It is respectfully submitted that adequate notice has already been provided to BEST to cure its defaults, as contemplated under the Agreement, Therefore, the Operator is now entitled to terminate the Agreement. In any case, and without prejudice to this averment, it is stated that even if BEST were to contend that a formal notice period has not been provided to it, in light of the persistent defaults on part of BEST and its failure to make timely payments, it has become commercially impossible for the Operator to continue rendering services to BEST. Therefore, by way of this letter, in the exercise of its rights under the Agreement, the Operator is forthwith terminating the Agreement. The Operator cannot wait for indefinite period of time for BEST to respond or to redress the issues/disputes of the Operator."*

He also pointed out that the Agreement contained an arbitration clause which was duly invoked vide the aforesaid notice. .

3. Mr. Gandhi the submitted that the reason the for filing the present Petition and moving for urgent interim relief was that The Learned Counsel appearing for the Petitioner submits on 19th October 2024 the Respondent's Chief Security Officer had prevented the Petitioners from removing the said buses from the Respondents parking lot at Oshiwara and Dindoshi. He submits that the said action on the part of the Respondent is clearly in the teeth of the Agreement entered into by the parties and it was thus that he submitted the Petitioner ought to be granted interim relief in terms of prayer clause (a).

4. Mr Palsuledesai, Learned Counsel entered appearance on behalf of the Respondent and sought time to file an Affidavit in Reply. When it

was put to Learned Counsel for the Respondent as to whether the Respondent was aggregable to the appointment of an arbitrator given that the record bore out that there was no disputed to the said Agreement, he requested the matter be kept back to enable him to take the necessary instructions.

5. Mr. Gandhi, then submitted that even if the Respondent was agreeable to the appointment of an arbitrator, he would be pressing for interim relief in terms of prayer clause (a) since the Respondent had absolutely no right under the Agreement to retain the buses which were owned by the Petitioner. He also submitted that in the event the Respondent was to take any steps to blacklist the Petitioner, the Respondent be directed to follow due process of law and give the Petitioner a show cause notice and hearing.

**At 2.30 pm.**

6. Mr. Palsuledesai informed the Court that he has taken instructions from Mr VK Patil the legal head of the Respondent and that the Respondent is will to the appointment of an arbitrator, subject to all the rights and contention of the Respondent being expressly kept open in the arbitration..

7. Hence, by consent of the parties, I appoint Mr Urvaksh Anklesaria, Advocate to act as the Sole Arbitrator to decide the disputes and differences between the parties arising out of Operation of Stage Carriage Services For Public Transport of 250 Mini AC Buses in the City

of Mumbai and its Extended Suburbs (**"the said agreement"**) annexed as Exhibit "A" to the Petition on the following Terms and Conditions:

#### TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr Urvaksh Anklesaria, 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:

|                   |                                            |
|-------------------|--------------------------------------------|
| <b>Arbitrator</b> | <b>Mr Urvaksh Anklesaria,<br/>Advocate</b> |
|-------------------|--------------------------------------------|

|                |                                                                          |
|----------------|--------------------------------------------------------------------------|
| <i>Address</i> | 29, 2nd Floor, Ali Chambers,<br>Tamarind Lane, Fort,<br>Mumbai 400 0 023 |
|----------------|--------------------------------------------------------------------------|

|               |             |
|---------------|-------------|
| <i>Mobile</i> | 98198 22590 |
|---------------|-------------|

(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 Petitioners 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 present Petition under Section 9 of the Arbitration Act will be treated, heard, and

disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.

- (iii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (g) **Fees.** Since the appointment of the Sole Arbitrator is by consent of the parties, the arbitral tribunal's fees shall not 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 Mumbai.

8. Mr. Gandhi then pressed for ad interim relief in terms of prayer clause (a). Having heard, learned Counsel and also having perused the terms of the Operation of Stage Carriage Services For Public Transport

of 250 Mini AC Buses in the City of Mumbai and its Extended Suburbs, I am prima facie satisfied that the buses in question are owned/belong to the Petitioner. This was not even disputed before me by the Respondent. Thus, I deem it fit to allow the Petition in terms of prayer clause (a) which reads thus, viz.

*“(a) The Court Receiver High Court Bombay be appointed as Receiver and take peaceful physical possession under Order XL, Rule 1 of CPC 1908 in respect of the hypothecated asset being USED CAR being make Mercedes Benz India P Ltd and Mode IMERCEDEZ BENZ-350 -GDI, bearing Engine No.- 64282641460067 bearing Chassis Number: WDC1668236M001626 and Vehicle Registration No. MH-48-S-5400 whether in the possession of the Respondent and/or any S<sup>n\*\*</sup> party and this Hon’ble Court be pleased to direct the Respondent and/or any 3<sup>\*^^</sup> Party (who may be in possession of the hypothecated Asset) to hand over the physical , peaceful and vacant possession of the asset being USED CAR being make Mercedes Benz India P Ltd and Model MERCEDEZ BENZ GL -350 -CDI, bearing Engine No. 64282641460067, bearing Chassis Number: WDC1668236M001626 and Vehicle Registration No. MH-48-S- 5400 forthwith accordingly to the Court Receiver. If the Court Receiver is not allowed the physical, peaceful and vacant possession of the hypothecated asset being USED CAR being make Mercedes Benz India P Ltd and Model MERCEDEZ BENZ GL -350 -CDI, bearing Engine No. 64282641460067, bearing Chassis Number: WDC1668236M001626 and Vehicle Registration No. MH-48-S- 5400 by the Respondent , the Court Receiver be allowed to take forcible possession of the said hypothecated Asset in the custody of the Respondent and/or any 3<sup>^\*\*</sup> Party along with appropriate Police protection of the Local Police Station. The Court Receiver High Court, Bombay be further directed to hand over the aforesaid Asset hereto to the Petitioner with Liberty to the Petitioner to dispose off the*

*same by private treaty with further liberty to adjust the sale proceeds towards the outstanding dues due to the Petitioner from the Respondent."*

Additionally, the law qua blacklisting absent a show cause notice is very well settled. Hence, in the event the Respondent is to take steps to blacklist the Petitioner, the Respondent shall issue to the Petitioner a show cause notice and accord the Petitioner with a hearing.

9. The Commercial Arbitration Petition and the Commercial Arbitration Applications are disposed of in the aforesaid terms.

10. No costs.

(ARIF S. DOCTOR, J)