

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

COMMERCIAL ARBITRATION APPLICATION NO. 176 OF 2024

ALD Automotive Private Limited (ALD))
Having registered office at 19th Floor,)
Tower A of Peninsula Business Park,)
Ganpat Rao Kadam Marg,)
Off Senapati Bapat Rd.)
Lower Parel, Mumbai – 400 013.) ...Applicant

Versus

Manjunatha H. B.)
Proprietor: M/s. S.S. Exports)
1st Floor, No.105, 11)
Embassy centre, Crescent Road)
K. P. East, Bangalore – 560 001.) ...Respondent

Mr. Yogesh Devnani, Vatsal Parmar i/b. Shreyas Shrivastava, for the Applicant.
None for the Respondent.

CORAM : ADVAIT M. SETHNA, J.
DATE : 25 FEBRUARY 2025

ORAL JUDGMENT :-

1. This is an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“**ACA**” for short) for appointment of an Arbitrator to arbitrate the disputes arising between the applicant and respondent under the Master Lease Agreement dated 29 December 2017 (“**Agreement**” for short). The applicant and the respondent are both the parties to the said Agreement which is duly executed by the applicant and the respondent to this application. To this there appears to be no dispute.

2. The Agreement contains an arbitration clause which reads thus :-

- “14.1 In the event of any dispute or difference arising between the Parties during the subsistence of this MLA, VLC or thereafter, in connection with the validity, interpretation, implementation or alleged breach of any provision of this MLA or VLC or regarding any question, including the question as to whether the termination of this MLA or VLC by one Party hereto has been legitimate, the Parties hereto shall endeavour to settle such dispute amicably. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the Parties hereto, after reasonable attempts which attempt shall continue for not less than 30 (thirty) days, gives 30 (thirty) days’ notice thereof to the other Party in writing.
- 14.2 In case of such failure the dispute shall be referred to a sole arbitrator appointed by the mutual consent of the Parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereto for the time being in force.
- 14.3 The arbitration shall be held at Mumbai and the proceedings shall be in the English language.
- 14.4 The arbitrator’s award shall be substantiated in writing.
- 14.5 The provisions of this Clause shall survive the termination of this MLA or VLC for any reason whatsoever.”

3. Before delving into the merits of the matter, the learned counsel for the applicant points out that several orders of the Court have been passed in these proceedings which have been listed on earlier occasions. The order dated 14 December 2024 records that the learned Advocate for the applicant had placed on record an affidavit of substituted service dated 4 April 2024 in compliance of the orders of this Court dated 4 March 2024. The same is on record of this Court. By the order of 4 March 2024, it was directed that as the respondent has been duly served and despite service has chosen not to appear, the matter shall be proceeded with on the adjourned date of hearing if the respondent fails to appear.

4. When the matter was called out in the morning session, none appeared for the respondent. The learned counsel for the applicant would submit that they have once again informed the respondent about the today's hearing scheduled at 2.30 pm, to which there is no response. The respondent has chosen not to appear despite being served as noted above. In the above backdrop and considering that Section 11 application was filed on 21 October 2022 and several opportunities have been granted to the respondent who has chosen not to appear. In such circumstances, this application is taken up for hearing.

5. The learned counsel for the applicant would submit that the disputes and differences arose between the parties under the Master Lease Agreement dated 29 December 2017.

6. In view thereof, it was on 22 April 2022 that the legal notice was issued by the Advocate for the applicant for recovery of certain amounts allegedly due and payable by the respondent to the applicant. It is the case of the applicant that the disputed amount due and payable by the respondent to the applicant under the Agreement was quantified at Rs.1,14,10,198.19/- as set out in the legal notice.

7. As there was no response to such legal notice the applicant decided to invoke the arbitration clause as set out in the Master Lease Agreement (Supra). Accordingly, a notice invoking arbitration dated 7 July 2022 was issued under Section 21 of the ACA by the Advocate for the applicant to the respondent. The notice invoking arbitration in paragraph 20 reproduced arbitration clause putting the respondent to notice that appropriate proceedings would be initiated against

the respondent within 15 days on the failure of the respondent to respond to such notice. Advocate for the respondents responded to the above notice invoking arbitration, by reply dated 19 July 2022. Pertinent it is to note that in the said reply the Advocate for the respondent in paragraphs 4 and 5 admits the payment of the amounts under the agreement specifically stating that such admitted and undisputed payments would be made by 15 August 2022. Paras 4 and 5 in such reply reads thus :-

- “4. Our Client states that it is only after receiving the aforesaid notice of invocation that you have through your advocates sent any response, which also appears to be nothing but a false and frivolous assurance.
5. However, Our Client states that it is bona fide business concern and always looks for opportunities to resolve the disputes amicably. In such light and in view of your assurance (vide your reply) to clear all the outstanding dues by 15.08.2022, we offer you last and final opportunity to pay the outstanding dues as stated above.”

8. The learned Advocate for the applicant addressed a further letter dated 5 August 2022 to the respondents relying on the disputed resolution/arbitration clause and thereby taking steps to resolve the disputes amicably by giving time to the respondents to clear all outstanding dues by August 2002 as also agreed by the respondents in their reply dated 19 July 2022. The letter of 5 August 2022 also stated that on failure to respond to the said letter, the applicant shall be constrained to take action under the Arbitration and Conciliation Act, 1996. The learned counsel for the applicant submits that the respondent has not responded to the said letter of the applicant dated 5 August 2022.

9. With the assistance of the learned counsel for the applicant, I have perused the record. From the orders passed and the affidavits of service filed, it is clear that the respondents have chosen not to appear despite service. On merits of the matter, perusal of the arbitration clause would clearly indicate that the disputes arising under the agreement shall be referred to the sole arbitrator.

10. A perusal of such clause would indicate that it partakes the nature and character of the arbitration agreement as stipulated under Section 7 of the Arbitration and Conciliation Act, 1996.

11. On perusal of the reply of the Advocate for the respondent dated 19 July 2022 to the notice invoking arbitration of the applicant's Advocate dated 7 February 2022, it stands out that the respondent has not in any manner, whatsoever disputed the existence of arbitration clause/agreement in the Master Lease Agreement. In fact, Advocate for the respondent in its reply dated 19 July 2022 acknowledged that certain amounts were due and payable to the applicant. Thus, the existence of arbitration clause in the given facts and circumstances is neither disputed nor controverted by the respondent. All rights and contentions of parties are expressly kept open to be raised before the learned Sole Arbitrator.

12. In the totality of the facts and circumstances arising in this case, I deem it fit and proper to exercise powers under Section 11(6) and appoint Shri Jamsheed Master as learned Sole Arbitrator to adjudicate the disputes and differences arising between the parties under the Arbitration Clause as contained in the Master Lease Agreement dated 29 December 2017.

13. In light of above, I deem it fit and proper to pass the following order:-

Appointment of Arbitrator:-

Advocate Jamsheed Master (Bombay High Court) is hereby appointed as learned sole arbitrator.

- i. A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within ten (10) days 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/s : Mr. Jamsheed Master
Address : Lentin Chambers, 1st floor,
Fort Mumbai 400 001.
Mobile : 9820840010
Email : masterjamsheed@gmail.com

- iii. **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy, soft copy, the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 to Advocates for the parties as soon as possible. The Advocates for the applicant will arrange to file the original statement in the Registry with the Prothonotary & Senior Master (Original Side) within three (03) days of it being made available by the learned sole arbitrator.

- iv. **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator decides to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- v. **Interim Application/s:** Interim Application, if any, filed under Section 17 of the Arbitration and Conciliation Act, 1996 shall be decided by the arbitrator, if and so when referred.
- vi. **Fees:** The arbitral tribunal's fees shall be governed by the Fourth Schedule to the Arbitration and Conciliation Act, 1996.
- vii. **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration shall be in Mumbai.
- vii. **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 proportion.

15. The Commercial Arbitration Application No.176 of 2024, is allowed as per prayer clause (a) and in the above terms. No order as to costs.

[ADVAIT M. SETHNA, J.]