

PURTI
PRASAD
PARAB
Digitally signed by
PURTI PRASAD
PARAB
Date: 2025.02.18
19:09:26 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMM. ARBITRATION APPLICATION NO. 56 OF 2025

Tata Motors Finance Limited

...Applicant

Versus

Munsif Ali and Anr.

...Respondents

Mr. Akshay Sawant *a/w Mr. Smit Solanki i/b I.V. Merchant & Co. for the Applicant.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 13, 2025

PC :

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under an agreement dated November 22, 2022. The arbitration agreement is contained in Clause 23 (found at Page 51 of the Application). In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. It is apparent from the record that the arbitration agreement was invoked by Applicant on September 27, 2024. There is no reply to the invocation notice. Service affidavit demonstrating service on the Respondents is taken on record. Since the Respondents have evidently been served, and the existence of an arbitration agreement is seen from the record, no fruitful purpose will be served keeping this Application pending any further.

3. The scope of review under Section 11 is explicitly set out in Section 11(6A) of the Act. It is now trite law, with particular regard to the decisions

of a seven-judge bench in the *In Re: Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Indian Stamp Act, 1899*¹ followed by multiple others, including *SBI General Insurance vs. Krish Spinning*² and *Ajay Patel vs. Jyotrindra Patel*³ that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has been formally executed. Even questions of existential substance is a matter that falls squarely in the domain of the arbitral tribunal, in view of Section 16 of the Act.

4. Being satisfied that an arbitration agreement is validly in existence, and that arbitration has been duly invoked, it is in the fitness of things to refer the disputes and differences between the parties in connection with the aforesaid agreement dated November 22, 2022 to arbitration by a Sole Arbitrator.

5. It is seen from the record that there is no denial of the existence of the arbitration agreement looking to the limited scope under Section 11(6) of the Act. Consequently, this Application deserves to be ***finally disposed of*** in the following terms:-

A] Mr. Ajai Fernandes, a Learned Advocate 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;

Office Address:- Office No.2, 3rd Floor, Kamanwala
Chambers, Sir P.M. Road,
Opp. Bombay Stores, Fort,
Mumbai – 400 001.

Email ID: ajai.fernandes@gmail.com

¹ (2024) 6 SCC 1

² 2024 SCC OnLine 1754

³ 2024 SCC OnLine SC 2597

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 a 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 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 Respondents;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, 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] 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.

6. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

7. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]