IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMM. ARBITRATION APPLICATION NO.268 OF 2024

Mahindra & Mahindra Limited ....Applicant
Vs
Jaydeep Automotive Private Limited & Ors. ...Respondents

Adv. Nishanth Chothani a/w Anuskha Shetty i/b MLS Vani & Associates, Advocates for Applicant.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 29, 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 the Dealer Agreement dated July 5, 2018. The arbitration agreement is contained in Clause 45 (found at Page 57 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. Learned Counsel for the Applicant submits that there was indeed a company called Mahindra Trucks & Buses Limited and it was eventually merged with Mahindra & Mahindra Limited. Be that as it

AARTI GAJANAN PALKAR
Digitally signed by AARTI GAJANAN PALKAR
Date: 2025.05.07 12:06:02 +0530

may, he submits that the reference to arbitration may be restricted to the Dealer Agreement dated July 5, 2018 which is between Mahindra & Mahindra Limited and Jaydeep Automotive Private Limited. He seeks liberty to file such other application as advised in respect of disputes, if any, under the Spare Parts Supply Agreement.

3. In view of the aforesaid submission, liberty to restrict the application to the Dealer Agreement dated July 5, 2018 leaving it open to pursue an application for appointment of an arbitrator in respect of the Spare Parts Supply Agreement separately.

4. Learned Counsel for the Respondents submits that Respondent Nos.2 and 3 are not signatories to the Dealer Agreement in their personal capacity. Learned Counsel for the Applicant points to clause 7 of the Dealer Agreement which contains clause stating that all the Partners, Directors and Proprietors of the Dealer would be deemed to be jointly and severally liable along with the Dealer to repay the amounts due and payable under the invoices. I do not wish to comment upon the efficacy of such a clause, but since the Applicant is a *dominus litis* and the Respondent company which is promoted by Respondent Nos.2 and 3 have consciously signed this agreement without expressing any opinion on merits, this issue is left open to be agitated before the arbitral tribunal.

5. Respondent Nos. 2 and 3 will be fully entitled to raise the objections about being made parties to the arbitral proceedings and it shall be up to the Applicant to demonstrate to the arbitral tribunal, invoking known principles of law about making non-signatories party to the arbitration, that such joinder is acceptable.

6. 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 ***Interplay Judgement***[1] followed by multiple others, including ***SBI General***[2] and ***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.

7. 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 Dealer Agreement to arbitration by a Sole Arbitrator.

---

[1] *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*
[2] *SBI General Insurance Co. Ltd. v. Krish Spinning – 2024 SCC OnLine SC 1754*
[3] *Ajay Madhusudan Patel v. Jyotrindra S. Patel – 2024 SCC OnLine SC 2597*

8. In these circumstances, this Application is hereby ***finally disposed of***, in terms of the following order:

A] Mr. Sanjay Kothari, an 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;

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 the date on which this order is uploaded on the website of this Court. 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 parties within a period of two weeks from the date on which this order is uploaded on the website of this Court;

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; and

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.

9. 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.

10. 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.]