

Salgaonkar

MANDIRA MILIND
SALGAONKAR

Digitally signed by MANDIRA
MILIND SALGAONKAR
Date: 2025.11.11 10:35:17 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO.225 OF 2024
WITH
COMMERCIAL ARBITRATION APPLICATION (L) NO.5880 OF 2025

Tata Motors Finance Limited .. Petitioner

Versus

Rootvizor Logistics & Ors. .. Respondents

...

Mr.Prathmesh M. i/b I.V.Merchant & Co. for the
Petitioner/Applicant.

CORAM: BHARATI DANGRE, J.

DATE : 7th NOVEMBER, 2025

...

P.C:-

1. The counsel representing Tata Motors Finance Limited, which has instituted Petition under Section 9 of the alongwith Application under Section 11 of the Arbitration and Conciliation Act, 1996 has circulated a draft amendment to correct the nomenclature of 'Tata Motors Finance Limited'

The Petition as well as the Application is permitted to be amended in terms of the draft amendment within a period of one week from today.

2. Learned counsel for the Petitioner would rely upon two affidavits of service; the first being affirmed on 7th July, 2024, where the clerk in the employment of M/s I.V.Merchant and

Co., Advocates for the Petitioner, had deposed that he dispatched the envelope containing the copy of Commercial Arbitration Petition No.225 of 2024 filed on behalf of the Petitioner through R.P.A.D, under service letter dated 16/07/2024. However, the envelope returned back to the Petitioner's Advocate with the remark, 'item returned refused'.

The affidavit, therefore, proceed to state that the refusal amounts to service and, therefore, the service on the Respondent is complete.

Learned counsel for the Petitioner also relied upon a further affidavit, affirmed on 7th March, 2025, filed by Mr.Satbir Singh, authorized representative of the Petitioner, having its registered office in Faridabad, Haryana, reflecting the same strategy taken to post the service letter dated 27/02/2025 on the wall at the premises where the Respondent is known to have last resided.

The affidavit tendered during the course of hearing is taken on record which is accompanied by the necessary proof of the pasting being done on the address reflected in the title clause, which is indicative of the service being completed upon the borrower as well as on two co-borrowers.

From the aforesaid affidavits, it is apparently clear that the service of the Arbitration Petition as well as of the Arbitration Application is effected upon the Respondents.

3. Heard learned counsel for the Petitioner- Tata Capital Limited and perused the Fuel Loan Agreement/Contract dated 13th June 2023, which include the clause for arbitration in form of Clause No.14, which reads to the following effect :-

“14. ARBITRATION:

14.1 All disputes, differences and/or claims arising out of this Agreement or as to the construction, meaning or effect hereof or as to the rights and liabilities of the parties hereunder shall be settled by arbitration to be held in Mumbai in accordance with the Arbitration and Conciliation Act 1996, or any statutory amendments thereof and shall be referred to a sole arbitrator to be appointed by the Lender. In the event of death, refusal, neglect, inability, or incapability of the person so appointed to act as an arbitrator, the Lender may appoint a new arbitrator. The proceedings will be conducted in English. The award of the arbitrator shall be final and binding on all parties concerned.

14.2 Nothing contained herein shall be construed as extinguishing, limiting or ousting the rights and remedies of the Lender if available now or in the future as against the Borrower, if any and/or any other persons, or any of their respective assets, under the SARFAESI Act and/or the IBC, and the Lender shall stand absolutely entitled to exercise such rights/remedies thereunder irrespective of the initiation, pendency, or continuation of any other arbitral or other proceedings.

14.3 Notwithstanding anything to the contrary contained hereinabove, in the event that the Lender, as a result of a change in applicable law or otherwise, becomes entitled to recover the dues owed to it or be treated as a 'financial Institution' under the DRT Act or any amendment, replacement thereof, and to exercise rights/remedies thereunder, the Borrower hereby expressly agrees and consents that the Lender shall be entitled to exercise the rights and remedies available to the Lender under the DRT Act including to recover the Outstanding Balance from the borrower, if any, or any other persons, by filing proceedings with any of the debt recovery tribunals constituted thereunder. In addition, the Parties agree that in the event that the Lender is empowered to exercise rights and powers under the provisions of the DRT Act as aforesaid, the provisions of Clause 14.1 above, to arbitrate as between the Lender and the Borrower shall, at the option of the Lender, cease to have effect.

14.4 Provided that the Lender shall at its discretion have the right to initiate/file/pursue common/combined proceedings/actions against the Borrower and/or any of the other Borrowers and it is clarified that the Lender shall, at its discretion, be entitled to consolidate and combine any arbitral or other legal proceedings initiated or proposed to be initiated under this Agreement with any arbitral or other legal proceedings initiated or proposed to be initiated under one or more of the other related documents.

14.5 All rights and remedies pursuant to this Agreement are without prejudice to the other and nothing contained in this Agreement shall in any manner compel the Lender to prefer one form of remedy over the other”.

4. Though several sub-clauses in clause No.14 confer discretion upon the Lender to appoint an arbitrator and the appointment shall be at the option of the Lender, since this clause cannot be given effect to and there is also invocation of arbitration in terms of the said clause, but the borrower and co-borrowers have failed to respond and despite notice being effected on them, as observed in the primordial part of the order, it is evident that they are evading the service of the notice, I deem it appropriate to pass the following order in the wake of a specific clause in the agreement for referring the dispute arising between the parties to the sole Arbitrator.

A] **Mr.Jamsheed Master**, an Advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and difference between the parties arising out of and in connection with the Agreement referred to above. The contact details of the arbitrator are as under :-

Office Address :- Lentin Chambers Office, 1-B, 1st floor, Dalal Street Kala Ghoda

Email ID :-masterjamsheed@gmail.com

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date on which this order is uploaded on the website of this Court. The Petitioner shall prove 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 receipt of a copy of this Order;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated by him, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

E] The sole Arbitrator shall be entitled to the fees prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

5. The proceedings filed under Section 9 in form of Arbitration Petition No.255 of 2024 is permitted to be converted under Section 17, with an additional pleadings permitted to be filed, at the discretion of the sole Arbitrator.

6. All issues on merits are expressly kept open to be agitated before the Arbitral Tribunal appointed hereby.

7. Arbitration Petition as well as the Application stand disposed of.

(BHARATI DANGRE, J.)