

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM. ARBITRATION APPLICATION NO.17 OF 2024
WITH
INTERIM APPLICATION NO. 6615 OF 2025
IN
COMM. ARBITRATION APPLICATION NO.17 OF 2024
WITH
INTERIM APPLICATION(L) NO.7553 OF 2025

Tata Motors Ltd .. Applicant
Versus
Bhagyodaya Trokhos Pvt Ltd .. Respondent
...

Ms.Tikshta Modi a/w Ms. Stephanie Pereira, Ms. Simran Raj, i/b Akhil Modi and Associates for the Applicant.

Mr. Ameya Deosthale a/w Mr. Kartik Pandey a/w Ms. Bhoomi Shah for legal heirs of respondent no.2 (G. Siddhalinga Swamy)

CORAM: BHARATI DANGRE, J.
DATED : 7th NOVEMBER 2025

P.C:-

1. The Dealership Agreement dated 10 February 2017, executed between Tata Motors Ltd, a company registered under the Indian Companies Act referred to as the 'Company' with the expression including its successor or permitted assigns and Bhagyodaya Trokhos Pvt. Ltd, another company registered under the Companies Act, being referred to as 'The Dealer', with an identical expression including the successors or permitted

assigns is the cause of discord between the parties.

The Agreement itself by Clause 43 prescribed that all disputes and/or differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of the contract or breach thereof would be settled by arbitration in accordance with the rules of arbitration of Singapore International Arbitration Centre, to be held at Mumbai and the Award made in pursuance thereof shall bind the parties.

It is also categorically mentioned in Clause 43(c) that the agreement being executed in Mumbai it is agreed that the rights and liabilities under the agreement of the parties thereof, their heirs, executors, administrators or successors and assigns as the case may be in case a dispute or difference arising from or incidental to, or touching upon the agreement, shall be subject to arbitration clause and shall be subject to the jurisdiction of courts of the territory of Mumbai and to the law for the time being in force in Mumbai and shall be determined by the courts of Mumbai to the exclusion of all other courts.

2. In the wake of the invocation of arbitration by the petitioner by a notice dated 24/12/2021, the petitioner has filed an application under Section 11, of the Act, with a request to refer the dispute that has arisen between the parties and in particular as stated in the invocation notice dated 24/12/2021, to appoint the sole arbitrator, under the Arbitration and Conciliation

Act, 1996.

3. The petition has impleaded the company as respondent no.1, whereas the other Directors are impleaded as respondent nos.2, 3 and 4.

The respondent no.2 G Siddhalinga Swamy, is informed to have demised and Interim Application No.6615 of 2025 is taken out seeking his substitution by his legal heir i.e. his wife Jyoti Hiremath and such an application is moved in the application filed under Section 11 as well as the proceedings filed under Section 9 and is pending for consideration.

As far as the discord between the applicant's company and the respondent no.1 company is concerned, the learned counsel for respondent no.1 do not dispute about the existence of the arbitration clause and the invocation of arbitration and she expresses no difficulty in case the dispute is made over to the Arbitrator, who is mutually agreed between the parties.

4. As far as the legal representative of respondent no.2 is concerned, he would object to the factum of she being referred for Arbitration as according to him the respondent no.2 has demised on 30/09/2024 and it is his specific contention that there is an unexplained delay in taking out the application bringing his widow on record and since she was not a party to the arbitration agreement, the arbitration cannot be forced upon her.

5. Responding to the aforesaid objection the counsel for the applicant has invited my attention to Clause 6a of the Dealership Agreement which specifically stipulate thus:-

“Directors of the Dealership representing it for the purpose of this agreement or managing dealership operations are set out in Annexure-1. The Directors of the Dealer, in case the Dealer is a private or a public limited company and partners of the Dealer in case the Dealer is a firm shall be jointly and severally and personally liable to the Company for any dues receivable from the Dealer by the Company pursuant to this Agreement even after the Dealership is terminated notwithstanding their ceasing to hold the office or act in such capacity at the time of termination of the Dealership. The Company shall be entitled to require such directors or partners or the proprietor of the Dealership, as the case may be, to give to the Company their personal guarantees in form as prescribed by the Company, and the Company shall also be entitled to call for bank guarantee from the Dealer in respect of the Company’s transactions with the Dealer if deemed fit by the Company.”

6. In the wake of the aforesaid clause, it is her specific submission that the term Dealer as far as the respondent is concerned, otherwise also included successor or permitted assigns and by virtue of Clause 6 (a) the liability was equally of the directors of the company and therefore, when the dealer goes for arbitration this includes the Directors as well as the legal representatives of the Directors in case of demise of either of them.

In any case, at this stage, I do not deem it appropriate to get into the said issue and leave it open for the arbitrator to consider the said issue.

7. The learned counsel for the widow of respondent no.2 would rely upon the decision of the Delhi High Court in case of

Vingro Developers Pvt. Ltd vs. Nitya Shree Developers (ARBP 667 of 2023) and in particular the contention raised that individual respondents had acted in capacity of directors of the company and cannot be held personally liable, in this regard, the observation of the Court, in paragraph no.23 is particularly derived upon which in term make reference to the decision of the Apex Court in case of *Cox and Kings Ltd vs SAP India Private Limited* 2023 SCC Online SC 1634.

I had opportunity to peruse the said judgment, which has decided the case on the basis of the factual aspect in light of the, relationship of principle, Agent, existing between the respondent company and the individual respondents under Section 182 and Section 230 of the Indian Contract Act, 1872, and the jurisprudence stemming from the same, with an observation that in absence of the conditions in the proviso being fulfilled, the Agent cannot be held liable or to be bound by the contracts entered into on behalf of the principal and therefore, respondent nos.2 and 3 cannot be made parties to arbitration.

However, in the present case, the relationship between the parties is governed by the Dealership Agreement which include a specific clause as 6 (a), and therefore, I leave it open for the parties to agitate this point before the arbitrator.

8. As a result of the above, the Interim Application no. 6615 of 2025, which seeks substitution of respondent no.2 by the legal heir in application filed under Section 11 stands allowed.

IA (L) No. 7553 of 2025.

9. The application being filed on 3/03/2025 seek substitution of respondent no.2 and though the application do not seek setting aside of the abatement, since according to the counsel for the applicant the section 9 petition itself is filed on 23/10/2024 and upon the knowledge being gained that the respondent no.2 has demised, the application is taken out on 3/03/2025, and it is admitted by the counsel for the applicant that there is a short delay of 3 days in bringing the legal heirs of the deceased on record. Considering the bonafides of the application, the application is made absolute in terms of prayer clause (a) by setting aside the abatement and permitting widow of respondent no.2 to be brought on record in both the proceedings i.e., under Section 9 as well as Section 11 application.

CARBP No. 33105 of 2024

10. The said petition is filed under Section 9 seeking certain reliefs pending herein and final disposal of the arbitration proceedings and consensus is expressed between the company and the director who is impleaded as respondent no.3, for the dispute being referred to arbitration. It is agreed that the section 9 petition can be treated as an application under Section 17.

By keeping open all the rights and contentions of the respondent no.2, who is now substituted in place of the Director, who has demised on 30/09/2024, the following order is passed:

A] Ms. Mahek Bookwala, 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 an in connection with the Agreement referred to above. The contact details of the arbitrator are as under :-

Office Address :- 32/34 Churchgate House, 2nd floor, Veer Nariman Road, Fort, Mumbai-400001

Email ID :- Mahek_bookwala@hotmail.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.

11. The proceedings filed under Section 9 is permitted to be converted under Section 17, with an additional pleadings permitted to be filed, at the discretion of the sole Arbitrator.

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

13. In view of the above, all the proceedings stand disposed of.

(SMT. BHARATI DANGRE, J.)