

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 313 OF 2025

Tata Capital Limited ...Applicant

Versus

Biotor Industries Limited ...Respondent

Mr. Rohan Savant, Counsel, a/w Akshay Sawant, Nidhi Mistry, Ashmita Poojary, Durva Thakare, i/b I.V. Merchant & Co., for the Applicant.

Mr. Anusya Raghavan, (through VC) for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 23, 2026

ORDER :

1. This is a Petition requesting substitution of arbitrator owing to recusal by the Learned Arbitral Tribunal citing ill health.
2. The arbitration commenced prior to December 10, 2010 on which date a statement of claim was filed. Pleadings are yet to be completed, with written submissions having been filed on August 18, 2017. It appears that Respondent No.1 was admitted to Corporate Insolvency Resolution Process (“**CIRP**”) under Insolvency and Bankruptcy Code, 2016 (“**IBC**”) thereby triggering a moratorium under Section 14 of the IBC.

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3. It appears that the resolution efforts failed and an order of liquidation was passed on December 31, 2018, which came to be rectified and restated on January 2, 2019. A copy of the order dated January 2, 2019 is tendered across the bar, is marked 'X' for identification and taken on record.

4. Learned Advocate for Respondent No.1 has instructions from the liquidation professional to assert that the Advocate should be firm in his objection to substitution of the arbitrator on the premise that a moratorium under Section 33 is in force.

5. It is common ground that Respondent No.3 passed away on May 29, 2021. Prior to that, on March 5, 2021 Respondent No.2 became a beneficiary of a moratorium pursuant to insolvency proceedings under Section 95 of the Act initiated by the State Bank of India. Since the moratorium of Respondent No. 1 under Section 14 of the IBC comes to an end when a liquidation is ordered, any restrictions can only be under Section 33 of the IBC would only be under Section 33(5) of the Act, which prohibits *institution* of any proceeding against the liquidation estate without the approval of the Adjudicating Authority.

6. The Learned Sole Arbitrator has recused from the matter citing indifferent health on October 4, 2024, which led to the

substitution of that arbitrator by referring the matter to the Mumbai Centre for International Arbitration (“*MCIA*”) on April 29, 2025. It appears that there has been no progress with the MCIA since, the fee schedule of the MCIA is not in conformity with the schedule to the Act and the parties cannot be compelled to agree to a fee schedule different from Schedule IV.

7. In these circumstances, these proceedings being prior pending proceedings, the request for substitution need not be held up any further. Any submissions that either the Insolvency Resolution Professional of Respondent No. 2 or liquidation professional of Respondent No.1 intends to make in the matter, including contentions on protections against continuance of the proceedings, may be presented before the substituted arbitrator so appointed. The vacant office of the Learned Arbitral Tribunal is being filled and nothing more is being done by the substitution, and that too at a time when the moratorium under Section 14 of the IBC has come to an end (vis-à-vis Respondent No. 1).

8. MCIA has written an email dated January 12, 2026 intimating that the matter is closed from their end. In these

circumstances, a substituted arbitrator is hereby appointed in the following terms without expressing any opinion on merits:-

- A) Mr. Aditya Thakkar, 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 of upload of this order. 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 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, 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.

9. It is made clear that this is purely a substitution order. Any implications in the law for the proceedings may be addressed to the arbitral tribunal. Legal heirs of Respondent No.3 may be brought on

record before such substituted arbitral tribunal and it is not necessary to bring them on record in this Application.

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.]