THE HON'BLE SRI JUSTICE UJJAL BHUYAN

ARBITRATION APPLICATION No.4 OF 2020

ORDER:

Heard Mr. K. Arun Kumar, learned counsel for the applicant; Mr. M.V. Sumanth, learned counsel for the first respondent; and Sri K. Shireen Sethna Baria, learned counsel for respondent No.2.

2. This application has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (briefly "the 1996 Act" hereinafter) for appointment of arbitrator to arbitrate on the dispute between the parties.

3. Case of the applicant is that Telangana State Road Transport Corporation (Corporation) had invited tenders for supplying buses on hire basis to meet the daily needs of transportation in the city of Hyderabad. Applicant submitted tender for supply of ten numbers of buses. Bid of the applicant was successful. Accordingly, applicant purchased 10 numbers of Tata vehicles of the Model LPO 1613 BS-IV KMPL from respondent No.1. For such purchase, applicant had availed loan of Rs.2,30,00,000-00 from Tata Motors Finance Limited. Accordingly on the strength of the loan availed of applicant purchased 10 numbers of such buses on 31.10.2015 from respondent No.1 which is the authorized dealer

of Tata vehicles in Hyderabad region; respondent No.2 being the manufacturer of Tata vehicles.

4. Respondent No.1 issued separate tax invoices dated 26.11.2015 for each of the ten vehicles purchased by the applicant which were thereafter delivered at M/s. Vigneshwara Body Building Coach, Dulapally, Hyderabad. Details of the ten buses so purchased are furnished in paragraph No.4 of the supporting affidavit.

5. At the time of purchase itself several defects in the vehicles were noticed by the applicant which were pointed out to respondent No.1. Because of such defects applicant could deploy all the ten vehicles with the corporation only from the month of February, 2016 onwards.

6. Defects in the vehicles faced by the applicant have been pointed out in paragraph No.5 of the supporting affidavit. Despite being made aware of the problems faced by the applicant in running of the vehicles no steps were taken by respondent No.1 compelling the applicant to address an e-mail to respondent No.2 on 30.08.2016. Though initially the approach of the second respondent appeared to be positive, however in the ultimate analysis the defects were not rectified. For such defects applicant faced difficulty in plying the buses. Ultimately, the corporation

issued termination notice to the applicant for non-operation of the vehicles.

7. Alleging deficiency in service applicant had approached the Consumer Disputes Redressal Forum by filing complaint No.177 of 2017. However, the Consumer Disputes Redressal Forum did not proceed with the complaint; rather granted liberty to the applicant to approach the appropriate court for remedy.

8. It was thereafter that applicant issued legal notice dated 08.04.2019 to the respondents calling upon them to compensate the applicant for the loss incurred. In the said legal notice applicant invoked the arbitration clause as per the tax invoices and nominated his arbitrator. Though respondent No.1 replied on 15.04.2019 no such reply was received from respondent No.2. By subsequent letter dated 10.05.2019 respondent No.1 denied all the contents of the legal notice dated 08.04.2019 including any arbitration clause and consequently reference to arbitration.

9. Thereafter applicant through his advocate addressed a letter dated 09.07.2018 to the respondents nominating an arbitrator to initiate arbitral proceedings. This time respondent No.2 replied vide letter dated 01.08.2019 contending that it was not a signatory/party to any arbitration agreement with the applicant.

10. Upon request of the applicant Sri V. Bal Ram, a retired District and Sessions Judge, issued notice to the respondents to commence arbitral proceedings. However, when the respondents expressed their un-willingness to proceed with the arbitration proceedings, learned arbitrator closed the proceedings on 31.08.2019 directing the applicant to take appropriate steps. It is thereafter that the present application came to be filed.

11. In its counter affidavit respondent No.1 has stated that second respondent is the manufacturer of the subject vehicles and respondent is only a dealer of second respondent. That apart first respondent also provides servicing of vehicles manufactured by the second respondent. Thus, first respondent has two roles to play – 1) being a delivery agent and 2) to provide servicing of the vehicles. In so far respondent No.1 is concerned it is only an intermediary and nothing more. The contract between the dealer and the customer is only in respect of pricing and delivery of vehicle. The related tax invoices contain the terms and conditions of such limited contract.

12. It is alleged that after four years of purchase of the subject vehicles applicant issued legal notice dated 08.04.2019 alleging manufacturing defect. Despite opposition by respondent No.1, applicant insisted on arbitration and appointed one arbitrator. As

respondent No.1 refused to participate, learned arbitrator withdrew from the arbitration. Since the grievance of the applicant centers around alleged manufacturing defects, respondent No.1 has no role to play being only a dealer.

13. Therefore, there is no dispute between the applicant and respondent No.1 arising out the tax invoices which can be referred to arbitration.

14. In its counter affidavit respondent No.2 has taken the stand that there is no arbitration agreement between the applicant and respondent No.2 as contemplated under Section 7 of the 1996 Act. Nature of arrangement between respondent No.2 as manufacturer and respondent No.1 as dealer is on principle to principle basis. Once the vehicle is sold to a dealer, the transaction between the manufacturer and the dealer is completed. Subsequent transaction of sale by dealer and purchase of vehicle by the customer is an independent contract of sale and purchase of vehicle by and between the dealer and customer. Respondent No.2 does not exercise any control and supervision over the dealer as to whom the vehicle should be sold and on what terms and conditions. Those are between the dealer

and the customer. Thus, there is no privity of contract between the applicant and respondent No.2.

15. Submissions made by learned counsel for the parties are on pleaded lines. However, learned counsel for the applicant has placed reliance on the following decisions in support of his contention that non signatory or third party can also be joined in arbitration: **CHLORO CONTROLS INDIA PRIVATE LIMITED Vs. SEVERN TRENT WATER PURIFICATION INC.[1], AMEET LALCHAND SHAH Vs. RISHABH ENTERPRISES[2], MAHANAGAR TELEPHONE NIGAM LIMITED Vs. CANARA BANK[3].**

15.1. However, learned counsel for the respondents submits that in the facts and circumstances of the present case, the above decisions are clearly distinguishable and are not at all applicable.

16. Submissions made by learned counsel for the parties have received the due consideration of the Court.

17. Section 2 (1) (b) of the 1996 Act defines 'arbitration agreement' to mean an agreement referred to Section 7. The word 'party' has been defined in Section 2 (1) (h) to mean a party to an arbitration agreement. Section 7 defines 'arbitration agreement'. Sub-section (1) says that 'arbitration agreement' means an

[1] (2013) 1 SCC 641
[2] (2018) 15 SCC 678
[3] AIR (2019) SC 4449

agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship whether contractual or not. As per sub-section (2) an 'arbitration agreement' may be in the form of an arbitration clause in a contract or in the form of separate agreement and sub-section (3) says that it shall be in writing. As per sub-section (4) an arbitration agreement should be in writing; if it is contained in a document it should be signed by the parties; it can also be an exchange of letters etc which provide a record of agreement; or an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

18. From the above what transpires is that the word 'party' or 'parties' has a definite meaning in so far arbitration agreement is concerned. A conjoint reading of Section 2 (1) (b), 2 (1) (h) and Section 7 of the 1996 Act would go to show that an agreement or a document would an arbitration agreement which is signed by the parties.

19. Having noticed the above we may advert to the tax invoices dated 26.11.2015 (10 numbers) on the basis of which applicant seeks reference of his alleged dispute with the respondents to arbitration. Those are tax invoices on the letter head of

respondent No.1 addressed by authorized signatory of respondent No.1 to the applicant. Those tax invoices are signed both by the applicant and authorized signatory of respondent No.1. The tax invoices contain 12 terms and conditions. As per condition No.7, if disputes arise between the parties thereto those shall be referred to arbitration according to the arbitration laws of the country.

20. Therefore, from a careful reading of condition No.7 it is seen that the disputes referred thereto should arise between the parties to the tax invoice which should be referred to arbitration. Evidently, the parties to the tax invoices are the applicant and respondent No.1; respondent No.2 is not a signatory to the tax invoices dated 26.11.2015 and is not a party thereto. It has no privity of contract with the applicant. On the otherhand, what is discernible from the pleadings is that grievance of the applicant pertains to alleged manufacturing defects of the vehicles purchased by the applicant from the dealer i.e., respondent No.1. In such circumstances, court is of the view that there is hardly any arbitrable dispute between the applicant and respondent No.1. Roping in respondent No.2 to arbitration on the strength of the tax invoices dated 26.11.2015 would be beyond the terms and conditions of the tax invoices, more particularly those contained in condition No.7.

21. In ***Chloro Controls India Private Limited (Supra)*** Supreme Court was considering the scope of Section 45 of the 1996 Act which deals with power of judicial authority to refer parties to arbitration. Though it was held that an application for appointment of arbitral tribunal under Section 45 of the 1996 Act would also be governed by the provisions of Section 11 (6) of the 1996 Act, Supreme Court however took the view that in a case where multiple agreements are signed between different parties and where some contained an arbitration clause and others do not, the court may exercise its discretion and decide the dispute itself or refer the dispute to an arbitral tribunal.

21.1. Thus, in the Chloro Controls Case Supreme Court was dealing with scope and interpretation of Section 45 of the 1996 Act and in that context had discussed the relevant principles on the basis of which a non-signatory party could also be bound by the arbitration agreement.

22. In ***Ameet Lalchand Shah (Supra)*** Supreme Court while analyzing its decision in Choloro Controls observed that under Section 45 of the 1996 Act an applicant seeking reference of disputes to arbitration can either be a party to the arbitration agreement or any person claiming through or under such party. Therefore, the expression “at the request of one of the parties or

any person claiming through or under him" would include non signatory parties. However, in Ameet Lalchand Shah Supreme Court found that though there were different agreements involving several parties but in the ultimate analysis it was a single commercial project integrally connected with commissioning of the solar plant.

23. Again in ***Mahanagar Telephone Nigam Limited*** (Supra), there were two issues before the Supreme Court – firstly, as to existence of a valid arbitration agreement between the three parties and secondly, Canfina not being a party to the arbitration agreement, could it be impleaded in arbitral proceedings. Analyzing the doctrine of "group of companies" where the conduct of the parties evidences the clear intention of the parties to bind both the signatory as well as non-signatory parties, it was found in the facts of that case that Canfina was set-up as a wholly owned subsidiary of Canara Bank. Dispute between the parties emanated out of the transaction dated 10.02.1992 whereby Canfina had subscribed to the bonds floated by Mahanagar Telephone Nigam Limited. Canfina subsequently transferred the bonds to its holding company Canara Bank. It was in that context Supreme Court came to the conclusion that it would a futile effort to decide the dispute between Mahanagar Telephone Nigam Limited and Canara Bank in the absence of Canfina since

the original transaction was between Mahanagar Telephone Nigam Limited and Canfina. It was held that there was a clear and direct nexus between the issue of the bonds, its subsequent transfer by Canfina to Canara Bank and the cancellation by Mahanagar Telephone Nigam Limited which led to disputes between the parties. Therefore, it was held that Canfina was undoubtedly a necessary and proper party to the arbitration proceedings, though not a signatory.

24. Evidently, the facts in the present case are entirely different. The dispute raised by the applicant does not pertain to respondent No.1 as a dealer. It is against alleged manufacturing defects of respondent No.2. However, in the absence of any contract between applicant and respondent No.2, it would be wholly untenable to direct the parties to arbitration.

25. In view of the above, this application fails and is accordingly dismissed. No order as to costs.

26. Miscellaneous petitions if any, pending in this arbitration application shall stand closed.

UJJAL BHUYAN, J

Date: 06.04.2022.

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THE HON'BLE SRI JUSTICE UJJAL BHUYAN

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