
(2015) 06 BOM CK 0127

In the Bombay High Court

Case No : Arbitration Application No. 220 of 2014

L.A. Motors Pvt. Ltd.

APPELLANT

Vs

Hyundai Motor India Ltd. and Others

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6)

Citation : (2015) 06 BOM CK 0127

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Vishal Talsania and Rizvi i/b Thakore Jariwala and Associates, for the Appellant; Krishnamurthy Iyer, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—By this application filed under section 11 of the Arbitration and Conciliation Act, 1996, the applicant seeks appointment of the arbitrator by invoking clause 11 of the Dealership Agreement dated 5th October, 2006 read with Renewal Agreement dated 31st October, 2012. Some of the relevant facts for the purpose of deciding this application are as under :

2. On 5th October, 2006, the parties entered into a dealership agreement by which the respondent appointed the applicant as a non-executive authorized HMI dealer to sell and service exclusively in Hyundai products at their showroom at Bandra, Mumbai on terms and conditions record therein. Under the said agreement, the respondents were to supply to the applicant on principal to principal basis Hyundai products, automobiles, spare parts etc. which were to be sold by the applicant. The said agreement dated 5th October, 2006 was renewed on 31st October, 2012 till 29th October, 2015 by executing a Renewal Agreement.

3. The dispute arose between the parties. On 10th March, 2014, the applicant by its advocate's letter invoked the arbitration agreement and called upon the respondent to agree upon either on the name of Mr. Rahul Chitnis, advocate or

Mr. Naushad Engineer, advocate practicing in this Court as a sole arbitrator to adjudicate upon the disputes and differences. On 3rd April, 2014, the respondent replied to the said notice dated 10th March, 2014 and contended that the applicant had no legal right to nominate / appoint any person as a sole arbitrator to adjudicate upon the dispute between the parties as the same was contrary to the terms agreed in the Dealership Agreement dated 5th October, 2006 and renewed vide letter dated 31st October, 2012. The respondent accordingly rejected the request of the applicant to concur with the names suggested by the applicant. Under the said notice, the respondent requested the learned advocates representing the applicant to advise the applicant to properly invoke the arbitration in terms of the Dealership Agreement dated 5th October, 2006. The respondent also requested them to advise to the applicant to withdraw the said notice dated 10th March, 2014 and to pay to the respondent the sum of Rs. 25,61,309/-.

4. The respondents vide their notice dated 23rd April, 2013 after considering the reply given by the applicant to the show cause notice, terminated the dealership agreement.

5. The applicant through the advocate's letter dated 21st May, 2014, addressed at the Delhi office as well as at the registered office address of the respondent at Kancheepuram, Tamil Nadu called upon the respondent to pay various amounts. The applicant thereafter filed this application, inter-alia praying for appointment of an arbitrator.

6. Learned counsel for the applicant submits that the Dealership Agreement dated 5th October, 2006 was though executed by the respondent at New Delhi, the same was signed and accepted by the applicant at Mumbai. He submits that the Renewal Agreement dated 31st October, 2012 was also accepted by the applicant at Mumbai. The Zonal office of the respondent is in Mumbai from where the applicant had been dealing with the respondent in the normal course of business. He submits that the applicant is based in Mumbai and has acted under the dealership agreement and effected the sales and rendered services entirely through its show room and workshop premises situated in Mumbai. He submits that no part of cause of action has arisen at Chennai.

7. Learned counsel for the applicant submits that since the respondents have refused to appoint an arbitrator as suggested by the applicant, the applicant has filed this application under section 11(6) of the Arbitration and Conciliation Act, 1996. He submits that under clause 11 of the Dealership Agreement, the respondent has been given right to appoint an arbitrator and may appoint a person who may be under their control and would not be an impartial arbitrator. He submits that since the applicant has apprehension of bias against the arbitrator who may be appointed by the respondent, the applicant has filed this application before the Hon'ble Chief Justice or his designate to appoint the arbitrator who shall be impartial and independent arbitrator. In support of this submission, learned counsel placed reliance on the judgment of the Supreme

Court in the case of Bipromasz Bipron Trading SA Vs. Bharat Electronics Limited (BEL), (2012) 3 ARBLR 1 : (2012) 110 CLA 388 : (2012) 5 SCALE 545 : (2012) 6 SCC 384 .

8. Learned counsel for the respondent on the other hand opposed this application on the ground that part of cause of action has arisen at Kancheepuram District in Tamil Nadu. He submits that the registered office of the respondent company which also happens to be the head quarters of the respondent is situated at Sriperumpudur Taluka of Kancheepuram District in Tamil Nadu. He submits that in the said district, the manufacturing plant of the respondent is situated and from the said manufacturing plant, the car's spare parts and accessories had been delivered to the applicant company for carrying out its dealership business. He does not dispute that the zonal office of the respondent company is in Mumbai. He does not dispute that the dealership agreement and renewal agreement were accepted by the applicant company at Mumbai.

9. Learned counsel for the respondent further submits that since the part of cause of action had arisen at Tamil Nadu, the parties by consent have conferred jurisdiction at one of the two courts having concurrent jurisdiction which is permissible in law. He submits that even the venue of the arbitration agreed under clause 11 of the dealership agreement is at Chennai.

10. Insofar as the maintainability of the application filed by the applicant is concerned, learned counsel invited my attention to the correspondence exchanged between the parties. He submits that there is no dispute that under clause 11 of the dealership agreement, the right to appoint an arbitrator exclusively vests in the respondent. My attention is invited to the letter dated 10th March, 2014, addressed by the applicant through its advocates nominating Mr. Rahul Chitnis, Advocate or Mr. Naushad Engineer, Advocate to act as the sole arbitrator to adjudicate upon the disputes and differences between the parties and called upon the respondent to concur with either of the said names for appointment as sole arbitrator. He submits that the said notice invoking the arbitration agreement was not in accordance with the said clause. The clause did not give any right to the applicant to nominate any arbitrator. The applicant had not called upon the Managing Director of the respondent to appoint an arbitrator in accordance with clause 11 and thus invocation of the arbitration agreement being not proper and not in accordance with the arbitration clause, the present application filed under section 11 is not maintainable on that ground. He submits that though the respondent had brought this fact to the notice of the applicant and had called upon it to withdraw the said notice, the applicant reiterated its stand and refused to withdraw the said notice.

11. A perusal of the arbitration agreement recorded in paragraph 11 makes it clear that the Managing Director of the respondent has exclusive right to appoint an arbitrator. The said clause further provides that the venue of the arbitration shall be at Chennai. Clause 12 of the said dealership agreement provided that the parties had unconditionally and irrevocably agreed to submit to the exclusive

jurisdiction of the competent courts in Chennai subject to clause 11.

12. Though it is not disputed by the respondent that the dealership agreement as well as the renewal agreement were accepted by the applicant at Mumbai and the zonal office of the respondent is also situated at Mumbai, it is the case of the respondent that the registered office of the respondent which happens to be the head quarters is situated at Kancheepuram district in Tamil Nadu is not disputed. It is also the case of the respondent that the manufacturing plant of the respondent from where the cars, spare parts and accessories had been delivered to the applicant for carrying out its dealership business also had been delivered from the said manufacturing plant situated at Kancheepuram district Tamil Nadu.

13. A perusal of the rejoinder filed by the applicant indicates that the applicant has not denied this part of the averment made by the respondent. The applicant has vaguely denied that no cause of action had taken place at Chennai. It is not in dispute that the dealership agreement as well as renewal letters were executed by the respondent from its registered office. In my view, since the part of cause of action had arisen within the jurisdiction of Chennai Court and part of cause of action had admittedly arisen at Mumbai, the parties by agreement can confer jurisdiction on one of the two courts which have concurrent jurisdiction to entertain, try and dispose of such proceedings. Since part of the cause of action had arisen at Chennai in view of the agreement, in my view the jurisdiction of other courts is ousted by the parties. Such agreement is permissible in law. The objection about jurisdiction raised by the respondent deserves acceptance. I am therefore of the opinion that the present proceedings filed under section 11 before this Court has no territorial jurisdiction to entertain this application.

14. Insofar as the second objection raised by the respondent that the notice of the applicant invoking arbitration agreement thereby nominating two names of the learned advocates practicing in this Court and calling upon the respondent to accept one of the two names as a sole arbitrator is not in accordance with clause 11 is concerned, in my view the objection raised by the respondent deserves acceptance. A perusal of the said clause makes it clear that the right to appoint an arbitrator under clause 11 vests exclusively in the Managing Director of the respondent. The applicant thus could not have named any arbitrator and could not have called upon the respondent to select one of the two names nominated by the applicant. The respondent had brought this fact to the notice of the applicant and had called upon the applicant to withdraw the notice having been issued not in accordance with clause 11, the applicant however, did not choose to withdraw the said notice and did not issue a fresh notice in accordance with clause 11 of the dealership agreement. In my view, since the applicant did not issue notice in accordance with clause 11 for appointment of an arbitrator of the Managing Director of the respondent, the respondent was justified in refusing to appoint any arbitrator. The application under section 11 for the appointment of the arbitrator is thus not maintainable also on that ground.

15. Insofar as the judgment of the Supreme Court in Bipromasz Bipron Trading

SA (supra) relied upon by the applicant is concerned, the facts of the said judgment are totally different. In this case no arbitrator is named in the agreement and in any event the arbitrator has not been nominated by the Managing Director of the respondent so far and thus the question of any apprehension of bias expressed by the applicant is totally unwarranted.

16. I therefore, pass the following order :-

a). The arbitration application is dismissed. No order as to costs.