

**IN THE HIGH COURT OF BOMBAY AT GOA****APPLICATION FOR APPOINTMENT OF  
ARBITRATOR NO.1/2015**

MR. P. SURESH NAYAK  
PROPRIETOR OF  
M/S. P. SURESH NAYAK. .... APPLICANT.

V/S.

M/S. W.S.G. ENTERPRISES THROUGH  
ITS PARTNERS. .... RESPONDENTS.

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for the Applicant.

Mr. A. F. Diniz and Mr. Ryan Menezes, Advocates for the Respondents.

**Coram :- F.M. REIS, J.**

Date :- 20<sup>th</sup> October, 2015.

**ORAL ORDER**

Heard Shri A. D. Bhobe, learned Counsel appearing for the Applicant and Shri Diniz, learned Counsel appearing for the Respondent.

2. The above application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of Arbitrator

on account of the dispute between the Applicant and the Respondent.

3. Shri A. D. Bhole, learned Counsel appearing for the Applicant, has taken me through the Arbitration Clause to point out that the dispute between the parties is in connection with such Agreement and is covered by the Arbitration Clause. Learned Counsel further pointed out that prior to the filing of the above application, a notice was issued to the Respondents to appoint an Arbitrator but, however, no such Arbitrator was appointed. Learned Counsel further submits that prior sending such notice, there were meetings between the parties to arrive at an amicable settlement which did not reach to any solution. Learned Counsel further pointed out that as the dispute is covered by the Arbitration clause, an Arbitrator is to be appointed to adjudicate the dispute between the parties.

4. On the other hand, Shri Diniz, learned Counsel appearing for the Respondents has disputed the said contention. Learned Counsel further pointed out that in terms of the Agreement between the parties, it clearly provides that the jurisdiction is of the Civil Court to decide the dispute between the parties. Learned Counsel further pointed out

that this clause itself suggests that the dispute cannot be decided by the Arbitrator. Learned Counsel has thereafter taken me through the Arbitration clause and pointed out that once it is shown that the parties have agreed that they intended to get the matter settled by the Civil Court, there is an express exclusion of an Arbitration Agreement. Learned Counsel further pointed out that as such, the question of appointing an Arbitrator did not arise. Learned Counsel also pointed out that the original Arbitration Agreement has not been produced by the Applicant. In support of his said submission, learned Counsel has relied upon the Judgment of the Apex Court reported in 2015 DGLS (Soft.) 288 in the case of *Payal Chawla Singh vs. Coca-Cola Co. & Anr.* and the Order of the learned Single Judge of this Court dated 10.04.2003 in the case of *Pax of Nagoa Sporting Club vs. The Goa Football & anr.*

5. I have given my thoughtful considerations to the rival contentions. I have also gone through the records. The Arbitration clause in the Agreement reads thus :

"17. Exclusive Jurisdiction :

It is agreed between the Parties to this Agreement

that any litigation, differences, disputes etc that may arise under this Agreement shall be subject to the Jurisdiction of the Courts of law situated in Goa only. It is further agreed that dispute if any arises anytime during the tenure of this 'Demise Charter Agreement', or for any other reasons, both the parties will sit across within 7 days of such occurrence and sort out the matter amicably/mutually. If for some reason the same cannot be resolved, the matter should be referred for Arbitration (as alternative dispute redressal forum) for resolution governed by Arbitration and Conciliation Act, 1996, to an expert in the matter of shipping, who can be a Lawyer/Barge Fleet Owner or any other person/persons who are conversant with the matter and are acceptable to both the parties and whose decision shall be binding on both the parties. This must be concluded within maximum of three months time."

6. Shri Diniz, learned Counsel appearing for the Respondent, has relied upon the first part of the said clause and pointed out that the disputes between the parties are to be adjudicated in a Court of law. I am not inclined to accept the said contention. The said clause only stipulates that the parties have agreed that the dispute has to be decided within the territorial jurisdiction of the State of Goa. This, by no

stretch of imagination, can mean that the dispute between the parties has to be decided only by the Civil Court.

7. With regard to the contention of Mr. Diniz, learned Counsel appearing for the respondent, relying upon the Judgment of the apex Court in the case of *Payal Chawla Singh vs. Coca-Cola Co. & Anr.* (supra) to the effect that the existence of the clause in the agreement that jurisdiction of the Courts of law situated in Goa only would mean that the arbitration has been excluded, I find that the said contention cannot be accepted. As pointed out herein above, the said clause only stipulates that the parties have agreed that the dispute has to be decided within the territorial jurisdiction of the State of Goa and does not exclude an adjudication by arbitration. In fact, in the said Judgment in the case of *Payal Chawla Singh vs. Coca-Cola Co. & Anr.* (supra), the Apex Court has come to the conclusion that no binding arbitration agreement between the parties therein was existing, so as to enable the Court to exercise its jurisdiction under Section 11(6) of the 1996 Act. The Apex Court also rejected the contention of the petitioner therein that the arbitration clause contained in “solution programme” to be a part of terms of the agreement between the parties

which was held to be wholly unsustainable. The agreement between the parties therein clearly provided that the exclusive jurisdiction was of the Courts in Bombay, which specifically negated the claim of the existence of an arbitration clause.

8. In the present case, the clause referred to herein above clearly stipulates that both the parties will sit across within 7 days of such occurrence and sort out the matter amicably and if, for some reason the same cannot be resolved, the matter shall be referred to an Arbitrator for resolution, governed by the Arbitration and Conciliation Act, 1996. On a plain reading of the said clause, binding arbitration agreement is clearly found therein and, as such, contention of Mr. Diniz, learned Counsel appearing for the respondents that there is no binding arbitration agreement between the parties cannot be accepted. As such, the said Judgment of the Apex Court relied upon by Mr. Diniz is not applicable to the facts of the present case.

9. With regard to the next contention of Mr. Diniz, learned Counsel appearing for the respondents to the effect that the parties had not attempted to amicably settle the dispute, I find that there is specific

avermment in the application to the effect that despite of personal meetings, as well as telephonic instructions to sort out the dispute arising out of "Demise Charter Agreement" dated 04.11.2005 amicably, nothing had materialised with that regard. The correspondence and the letters produce on record would also suggest that despite of attempts by the parties, amicable solution within the time prescribed in the agreement could not be arrived at. This would clearly suggest that attempts were made to settle the dispute amicably, but did not yield any result.

10. With regard to the contention of Mr. Diniz, learned Counsel appearing for the Respondents that the original agreement has not been produced, I find that the respondents themselves had sought for a copy of the Agreement which was apparently submitted to the Respondents. Apart from that, the existence of the agreement has not been disputed and that the agreement has been signed by the parties, has also not been disputed. In such circumstances, the contention of Mr. Diniz, learned Counsel appearing for the respondents cannot be accepted.

11. In view of the above, I pass the following :

**ORDER**

(I) Shri M. S. Keni, Retired Judge of the City Civil Court, at Mumbai, having office at Margao, is appointed as an Arbitrator to settle the dispute between the parties.

(II) Application stands disposed of.

**F.M. REIS, J.**

arp/ssm.