

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO.32 OF 2017

M/s.Centrum Capital Limited)....Applicant
V/s.

M/s.Hotel Horizon Private Limited)....Respondent

Mr.Rajeev Ravi i/by Prudentia Advisory LLP for the applicant.

Mr.Shailesh Shukla i/by Shree & Co. for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 7.12.2017

P.C.:-

1 Mr.Shailesh Shukla undertakes to file Vakalatnama on behalf of respondent within one week. No reply has been filed by respondent. Counsel stated that they are not filing any reply and wanted to argue the matter. It was submitted by Mr.Shukla that the application is premature because respondent has not appointed an arbitrator. According to counsel, respondent has not, in so many words, stated that they are appointing Mr.Rajeev Singh as their arbitrator. Counsel relied upon the judgment of the Supreme Court in ¹*India Household and Healthcare Ltd. Vs. LG Household and Healthcare Ltd.*, to buttress his submission. According to counsel the letter dated 4.7.2016 is only a request to nominate a person and not appointing the person as an arbitrator. Counsel for respondent does

1 AIR 2007 SUPREME COURT 1376

not dispute that there is an arbitration clause but states that the application is premature.

2 Each matter depends on its own facts and circumstances. The judgment relied upon by the counsel for respondent does not indicate what was the letter that was written by the applicant therein while invoking the arbitration clause. Based on the facts of that case the court came to a conclusion that the applicant had only made a request to nominate a person in Chennai with whom the respondent could interact to agree on the arbitrator to whom the claims can be made to decide the disputes between the parties. Reading paragraph nos.23 & 24 of the said judgment which is quoted below, it looks like no person was identified to be the arbitrator of the applicant.

“23. By reason of a notice dated 15.04.2005, only a request had been made to nominate a person in Chennai with whom the respondent could interact to agree on the arbitrator to whom the claims can be made to decide the disputes between the parties.

24. Applicant has not appointed its arbitrator. Respondent has also not been called upon to appoint its arbitrator by the said notice or otherwise. An application for appointment of an arbitrator, therefore, is not maintainable unless the procedure and mechanism agreed to by and between the parties is complied with.

3 In the present case paragraph-10 of the notice invoking

arbitration dated 4.7.2016 reads as under :-

“Our client states that you have failed to make the payment to our client and as such the dispute arises between you and our client and therefore our client hereby invokes Arbitration Clause as per Clause No.IX of said Mandate letter which constitutes agreement/contract between the parties. Our client suggests the name of Mr.Rajiv Singh as arbitrator of our clients choice and you may suggest the name of the arbitrator of your choice and the two arbitrators may appoint the third arbitrator and the dispute be referred to them. Our client further states that if you are agreeable to an appointment of Sole Arbitrator and refer the dispute to Sole Arbitrator instead and in place of three Arbitrators than our client is ready and agreeable for the same and we suggest the name of Mr.Rajiv Singh as Sole Arbitrator.”

4 The facts in this case are totally different with the facts in the case of **India Household** (supra). Considering paragraph-10 of the notice as quoted above, I am satisfied that the applicant has identified and nominated Mr.Rajiv Singh as arbitrator on behalf of applicant. Therefore, I am not agreeable with the submission that the application is premature.

5 At this stage, Mr.Shukla appearing for respondent states that court may appoint any lawyer from Bombay as sole arbitrator.

6 Therefore, the following order is passed :-

ORDER

(a) Ms. Deepti Panda, an advocate practicing in this court, Mobile. no.9892079219, is appointed as sole arbitrator to adjudicate upon all disputes and differences, including counter claim, if any, connected with, in relation to and arising out of the Mandate Letter/Agreement dated 28.8.2013 ;

(b) The fees, administrative expenses, typing charges and venue charges shall be shared equally between the parties and the same will be cost in the arbitral proceeding ;

(c) Within 3 weeks of receiving a copy of this order either from the advocates for petitioner or for respondents, the learned Arbitrator shall file with the parties, disclosure in writing as required under Section 11(8) read with section 12(1) of Arbitration and Conciliation Act 1996;

(d) Application therefore, allowed with cost in the sum of Rs.25,000/-

(K.R.SHRIRAM,J)