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

ARBITRATION APPLICATION NO. 92 OF 2015

Manish Wadhwani .. Applicant
Vs.
M/s. Birla Surya Ltd.
through Official Liquidator,
High Court, Bombay .. Respondent

Ms. Smita Sawant i/b Dave and Co. for applicant.

Mr.Anuraag Gokhale for respondent Nos.1 and 3 (in liquidation).

CORAM : K.R.SHRIRAM, J.
DATE : 1ST NOVEMBER 2017

P.C.

1 Applicant, respondent no.1 (in liquidation), respondent no.2 and respondent no.3 (in liquidation) had entered into Share Subscription cum Shareholders Agreement dated 9th September 2011 under which applicant gave a sum of Rs.1,50,00,006/- as Investor Subscription Money to respondent no.1 (in liquidation). In consideration, respondent no.1 was to come out with an initial public offer (IPO) and allot to applicant 789474 investor equity shares of respondent no.1 (in liquidation). Clause 12.1 provides that if respondent no.1 do not undertake an IPO within 18 months, respondents shall repay the amount as per the agreement. Clause 15 is the arbitration clause.

2 As per the agreement, applicant remitted the amount of Rs.1,50,00,006/-. It is the case of applicant that respondent no. 1 did not come out with the IPO and the amount as repayable also is not paid. Applicant vide its advocates' letter dated 18th June 2014 invoked the arbitration. Respondents through their advocates replied vide letter dated 3rd July 2014 stating they are seeking instructions and will revert in due course. No communication was sent thereafter.

3 Respondent no.1 and respondent no.3 are in liquidation and represented through the official liquidator. Respondent no.2, though served is not present. None of respondents have even filed reply opposing the application. The averments contained in the application therefore remained uncontroverted.

4 Ms. Manjiri Shah, an Advocate practicing in this Court is appointed as Sole Arbitrator to decide all disputes and differences arising out of, in connection with and relating to the Share Subscription Agreement dated 9th September 2011. The fees and expenses of the Arbitrator to be shared equally between the parties and the same shall be subject to costs in the arbitration proceedings.

5 The Learned Arbitrator shall give disclosure in writing as required under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, within three weeks of receiving a copy of this order, to the advocates for both applicant as well as respondent. Petitioner also to forward a copy of this order to the Sole Arbitrator. Parties are at liberty to raise all points before the Learned Arbitrator.

6 Application accordingly disposed.

(K.R. SHRIRAM, J.)