

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 69 OF 2019

M/s. Gravity Roof Head Liners Pvt. Ltd.	... Petitioner
V/s.	
Jehangir Nariman Dorabjee & Ors.	... Respondents

Mr. Tejesh Dande a/w. Bharat Gadhavi i/b. Tejesh Dande & Associates for the Petitioner.
Mr. Jaydeep Deo for Respondent nos. 1 and 2.
Ms. Sneha Bhange I/b. Chaitanya Nikte for respondent no. 5.

**CORAM : G.S.KULKARNI, J.
DATE : 3rd July, 2019**

P.C.:

Heard learned counsel for the parties.

2. On 12th June, 2019, this Court has passed following order:

“Mr. Deo appears for respondent nos. 1 and 2. Ms. Bhange appears for respondent no. 3. It is now informed that the respondent nos. 4 and 5 are also served and affidavit of service will be placed on record before the returnable date. However, to grant one more opportunity to the respondents, who are not appearing, learned Advocate for the petitioner is permitted to serve these respondents by private service and place on record affidavit of service before the returnable date. S.O. one week at the request of learned counsel for respondents appearing today.”

3. Mr. Dande, learned counsel for the petitioner has placed on record affidavit of service to state that respondent nos. 4 and 5 are served.

4. Respondent nos. 1 and 2 are represented by Mr. Deo. Respondent no. 3 is represented by Ms. Sneha Bhange. It is stated that the contesting parties are in fact respondent nos. 1 to 3. Accordingly, the Petition is taken up for hearing.

5. This is a Petition under section 11 of the Arbitration and Conciliation Act, 1996 whereby the petitioner has prayed for appointment of an Arbitral Tribunal to adjudicate the disputes and differences which are stated to have arisen between the parties under the development agreement dated 31st December, 2007. The arbitration agreement is contained in Clause 27 of the said agreement, which reads thus:

“27.1 Any and all claims, disputes, questions or controversies involving the parties and arising out of or in connection with or relating to this Agreement, or the execution, interpretation, validity, performance breach or termination hereof, including, without limitation, the provisions of this Clause (hereinafter to as the “Dispute”) shall be resolved by such parties within one (1) month of the arising of a Dispute by amicable negotiation and conciliation between the parties. If the parties are unable to resolve and settle the dispute within one month, then any Party shall be entitled to cause the Dispute to be submitted for arbitration in accordance with the terms of this Clause.

27.2 Any Dispute that is not settled to the satisfaction of the Parties under Clause 27.1 hereinabove shall be finally resolved by arbitration in accordance with the Indian Laws of Arbitration.

27.3 The Arbitration proceedings will be conducted by sole arbitrator to be appointed mutually by all the parties or when mutually not agreed to be appointed in accordance with the Arbitration and Conciliation Act, 1996. The place of arbitration shall be Pune. All arbitration proceedings shall be conducted in the English language.”

6. The invocation of the arbitration agreement is also not in dispute. After this Petition was heard for sometime, learned counsel for the respondents was agreeable that the dispute be referred to arbitration by appointing an arbitral tribunal.

7. In view of the consensus between the parties and considering the fact that respondent nos. 4 and 5 despite service did not appear in the present proceedings, it will have to be accepted that they have no objection for the Court to pass appropriate orders. The Petition is accordingly required to be allowed. Hence, following order:

ORDER

- (i) Smt. Justice R.P. Sondurbaldota, Former judge of this Court is appointed as an arbitrator to adjudicate the disputes between the parties which have arisen under the development agreement dated 31st December, 2007.
- (ii) The learned prospective sole arbitrator, ten days before entering the arbitration reference, shall forward a

statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act,1996, to the Registrar (Judicial-I) of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

- (iii) The fees payable to the arbitral tribunal shall be the fees as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules,2018, which will be borne by the parties in equal proportion;
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) All contentions of the parties are expressly kept open;
- (vi) The petition is disposed of in the above terms. No costs.
- (vii) Office to forward a copy of this order to the learned

Arbitrator on the following address:

Smt. Justice R.P. Sondurbaldota (Retd.)
Survey No. 99/1B, Ambegaon (Kh.)
Tal. Haveli, Dist. Pune-411 046.
(M) 9819821533

(G.S.KULKARNI, J.)