

vks.

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

COMMERCIAL ARBITRATION APPLICATION (L) NO.129 OF 2019

Tilaknagar Industries Limited

... Applicant.

Versus

Mason & Summers Alcobev Pvt.
Ltd and anr

...Respondents

- Mr. Manendra Kane a/w Mr. Aasif Navodia and Ms. Harsha Uppal, i/by W. S. Kane and Co., for the Applicant.

CORAM : G. S. KULKARNI, J.

DATE : 4th APRIL, 2019

P.C. :

1] Heard Mr. Kane, learned counsel for the applicant. None appears for the respondents though served.

2] This matter was heard by the Court on 1st April, 2019 when the following order was passed:-

"1. To enable learned counsel for the applicant to re-serve the respondents and to file affidavit of service on record, stand over to 5 April, 2019.

2. Notice to indicate that on the adjourned date, the matter will be taken up for hearing".

3] Mr. Kane, learned counsel for the applicant has placed on record three affidavits of service. The first affidavit is dated 1st April, 2019, the second affidavit is dated 3rd April, 2019 and the third affidavit is dated 4th April, 2019, setting out the service of these proceedings on the respondents. Respondents despite notice have chosen not to appear. Accordingly this application is taken up for hearing.

4] This application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "ACA"), is filed by the applicant invoking the arbitration agreement as contained in clause 17 of the Share Purchase Agreement (for short, "SPA"), dated 27th September, 2012, praying for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties, in regard to the buy back of 1,30,000 shares of respondent No.2, purchased by applicant from respondent No.3.

5] I have perused the said SPA. Clause No.17 of the SPA, is an arbitration agreement between the parties. It needs to be noted at this stage that the parties are already before an arbitral tribunal of a sole arbitrator as appointed by this Court, by an order passed in Arbitration Petition No.306 of 2016 dated 28th September, 2017 in regard to a dispute under the SPA on the recall of the loan facility. It is stated that these

arbitral proceedings are in progress before the learned sole Arbitrator.

6] In regard to the disputes as stated to have arisen and subject matter of the present proceedings which is in regard to the buy back of the shares as noted above, on behalf of the applicant, a notice dated 12th September, 2018 came to be issued to respondent No.1 to buy all shares as per clause 14 of the said S.P.A. This notice was not responded. The applicant, therefore, by Advocate notice dated 26th November, 2018 invoked the arbitration agreement between the parties and called upon the respondent to appoint an arbitral tribunal and/or to nominate a sole arbitrator to adjudicate the disputes between the parties. This notice was not responded. Intimation was also issued to respondent No.2, by a letter dated 11.1.2019, of the applicant's advocates.

7] I have heard Mr. Kane, learned counsel for the applicant as also perused the record. The averments as made in the application and the documents as placed on record are required to be treated as uncontroverted. Clause No.17 of the S.P.A contains an arbitration agreement between the parties. There is no dispute on the existence of an arbitration agreement between the parties. It is clear that there is a dispute arising between the parties in regard to buy back of the shares under the agreement in regard to which the applicant invoked the arbitration

agreement, by the applicant's advocates notice dated 26.11.2018 addressed to the respondent.

8] It also needs to be noted on perusal of the order dated 28th September, 2017, passed by this Court, that the parties are before arbitral tribunal under this very S.P.A is in regard to the recall of the loan facilities. Considering the facts and circumstances it would be in the interest of the parties that the disputes arising in regard to the buy back of the shares are referred to the same learned sole Arbitrator.

9] Hence, the following order.

Order

i] Mr. Cyrus Ardeshir, Advocate of this Court, is appointed as the prospective substitute Arbitrator to adjudicate the disputes and differences between the parties, arising under the Share Purchase Agreement dated 27th September, 2012;

ii] The prospective sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the provisions of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

iii) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today at a date and time

as may be fixed by the prospective arbitrator;

iv) All contentions of the parties on merits of the matter are expressly kept open;

(vi) The Arbitration petition is disposed of in the above terms. No costs.

10] Office to forward a copy of this order to the learned Arbitrator on the following address:

Vardhman Chamber,
Off, 217, 2nd floor, Kawasji Patel Street,
Fort, Mumbai 400 001.
Mobile NO.9820097671.

(G. S. KULKARNI, J.)