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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.248 OF 2018**

Phoenix Marketing	..Applicant
Vs.	
Lubrita India Pvt. Ltd. (LIPL) & Anr.	..Respondents

Mr.Rohit Joshi with Mr.Dushyant Pagare for Applicant.
Mr.Ajinkya Badar i/b. Adv. Joshi for Respondent No.1.
Mr.Sumit Rai with Mr.Harsh Kesharia for Respondent No.2.

**CORAM : G.S. KULKARNI, J.
DATE : 13th MARCH, 2019**

P.C.:

Heard learned Counsel for the applicant and learned Counsel for the respondents.

2. Respondent No.2 is stated to be a partner of the applicant company who has already resigned as a partner and thus, he is not necessary party of the petition. Respondent No.2 is permitted to be deleted.

3. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the ACA") whereby the applicant has prayed for appointment of an arbitrator to adjudicate the disputes and differences between the parties which are stated to have arisen under an agreement dated 29 June 2015 as executed between the applicant and

the respondents. The arbitration agreement is contained in Clause 55 of the said agreement which reads thus:-

“55. Any dispute arising out of or in connection with this Agreement, the construction of any provision of this Agreement or the rights, duties or liabilities of the Parties hereto under this Agreement that cannot be amicably resolved by the Parties within fourteen (14) days written notice by either Party to the other of the nature of such dispute shall be finally settled by arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 or any subsequent enactments or amendment thereto.”

4. The applicant by a notice dated 28 May 2016 has invoked the arbitration agreement and requested the respondent No.1 to refer the disputes for arbitration by appointing an arbitrator. As there was no concurrence on the part of respondents, present application has been filed.

5. After this application was heard for sometime, learned Counsel for the respondents on instructions submit that the disputes be referred for arbitration by appointing a sole arbitrator.

6. In view of the above consensus between the parties, the application can conveniently be disposed of. Hence, the following order:-

ORDER

(i) Mr.Anupam Surve, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties

under the agreement dated 29 June 2015;

(ii) The learned sole prospective arbitrator, fifteen 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 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 on a date which may be mutually fixed by the prospective sole arbitrator;

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

(v) The application is disposed of in the above terms. No costs.

(vi) Office to forward a copy of this order to the learned Arbitrator on the following address:

address: 401, Savla Chambers, Chamber of Mr.Kevik
Setalvad, Cawasji Patel Street, Mumbai-400 001.

7. In the meantime, the applicant shall also consider the withdrawing the police complaint as made by them as the parties have now agreed for referring the disputes for arbitration.

[G.S. KULKARNI, J.]