

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.210 OF 2019**

Ulka Shah	...	Applicant
versus		
Wunderbar Films Pvt. Ltd.	...	Respondent

Mr. Arup Dasgupta with Ms. Sonam Ghiya i/by Jhangiani Narula and Associates, for Applicant.
None for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 11st SEPTEMBER, 2019

P.C.:

1. The Applicant has filed the above Arbitration Application against the Respondent under Section 11 of the Arbitration and Conciliation Act, 1996, as amended by Arbitration and Conciliation (Amendment) Act, 2015 (the Act) for appointment of a sole arbitrator to resolve the disputes that have arisen between the parties under the Deed of Assignment dated 17th October, 2017.

2. Clause 29 of the Development Agreement dated 17th October, 2017 pertains to arbitration and is reproduced hereunder :

“29. In case of any disputes or differences between the parties, the parties shall refer the matter to the Arbitration of a sole Arbitrator, if the parties agree upon the sole arbitrator or to a panel of three arbitrators, one to be appointed by each party and the third Arbitrator is appointed by the other two Arbitrators as Presiding Arbitrator. The Arbitration shall be at

Mumbai and shall be governed by the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification or enactment thereof for the time being in force.”

3. Since disputes arose between the parties, the Applicant vide a letter dated 14th May, 2019 invoked the arbitration agreement. The Respondent did not respond to the said invocation notice of the Applicant. The Applicant was therefore, constrained to file the above Arbitration Application seeking appointment of the sole arbitrator in the matter.

4. A copy of the above Arbitration Application is duly served on the Respondent and an affidavit proving service dated 26th June, 2019 is on record. However, none appear for the Respondent. The Respondent has not agreed to the name proposed by the Applicant and has also not suggested the name of any other person to act as Arbitrator in the matter. The Respondent also failed to file Affidavit in Reply opposing the Application. It is therefore, clear that despite an agreement, the Respondent has failed to appoint an Arbitrator to resolve their disputes. Hence, the following order :

- (i) Mr. Cyrus Bharucha, Advocate is appointed as the sole Arbitrator to decide the disputes between the parties arising out of the Deed of Assignment dated 17th October, 2017.
- (ii) The learned Arbitrator shall within a period of two weeks from today file his

disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) with the Prothonotary and Senior Master of this Court.

(iii) The venue of Arbitration shall be at Mumbai.

(iv) The parties and/or their Advocates shall appear before the learned Arbitrator in his chambers, on 28th September, 2019 at 10.00 a.m. and obtain necessary directions.

(v) All contentions of the parties are kept open.

(vi) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

(vii) The cost of arbitration shall initially be borne by the parties equally.

2. The Advocate for the Applicant shall forward a copy of this order to Mr. Cyrus Bharucha, Advocate. A copy of the order shall also be forwarded to the Respondent by Speed Post A.D. and email at its last known address.

3. The above Arbitration Application is accordingly disposed of.

(S.J.KATHAWALLA, J.)