

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Commercial Arbitration Application No.254 OF 2019

11Sports Pvt.Ltd. ...Applicant

Versus

1.Oilmax Energy Pvt.Ltd. & Ors. ...Respondents

Mr.Abhishek Malhotra with Ms.Sneha Herwade, for the Applicant.

Mr.Akash Menon with Ms.Bency Ramkrishnan, for Respondent nos.1 and 2.

CORAM : G.S. KULKARNI, J.

DATE : 18th October, 2019**PC.:**

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

2. This is an application filed under Section 11 of the Arbitration and Conciliation Act,1996 (for short 'the Act') whereby the applicant is praying for appointment of an arbitral tribunal to arbitrate the disputes and differences between the parties which have arisen under the Franchise Agreement dated 25 May 2017. At the outset the learned counsel for applicant would fairly state that the agreement in question itself is not executed.

3. Perusal of the agreement shows that the name of the franchise holder in whose favour the applicant would enter into an agreement, itself is kept blank. It is this agreement which is being referred and more particularly Clause 16 (Clause 16.1 to Clause 16.10) therein to say that there is an arbitration agreement between the parties. The contention as urged on behalf of the applicant is that though the agreement is not executed, to some extent the contract is acted upon and the franchise business was acted upon. My attention is drawn to the correspondence placed on record between the parties. Another letter dated 29 May 2018 which is not part of the record as tendered across the bar is referred to contend that the franchise agreement was acted upon and hence it should be presumed that there is an arbitration agreement between the parties.

4. I am afraid that this contention of the petitioner cannot be accepted. For an arbitral agreement to exist between the parties there must be a conscious acceptance of the arbitration agreement between the parties. The correspondence which is annexed to the application as also the letter dated 29 May 2018, in my opinion, in no manner can be accepted to form any arbitration agreement between the parties in terms of Section 7 of the Act, so that the parties can be referred for adjudication of disputes by appointing arbitral tribunal. Learned Counsel

for the applicant has placed reliance on the decision of the Supreme Court in *Trimex International FZE Ltd. Dubai Vs. Vedanta Aluminium Ltd, India*¹. In this decision, the Supreme Court has considered the correspondence between the parties as also the reference to arbitration agreement and it is on the said premise it was observed that the arbitration agreement between the parties is required to be recognized. Such are not the facts in the present case. The correspondence in this case in no manner demonstrates the existence of an arbitration agreement.

5. The petition is without merit. It is accordingly rejected, however, keeping all contentions of the parties open to espouse such other remedies as available in law.

[G.S. KULKARNI, J.]

¹ (2010)3 SCC 1