

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 302 OF 2019

Ruptub Solutions Pvt.Ltd. ... Applicant

Versus

Faisal Thekke Kadavnath,
Partner / Proprietor of Hotel Abrol ... Respondent

Mr.Kapil Shah for the Applicant.

None for the Respondent.

CORAM : S.J. KATHAWALLA, JJ.

DATE : 27TH 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 Marketing Services Agreement dated 31st January, 2018.

2. Clause 81 of Marketing Services Agreement dated 31st January, 2018 pertains to arbitration and is reproduced hereunder :

“81. This Agreement shall be governed by and construed in accordance with the laws of India. Any dispute arising out of this Agreement may in the first instance be resolved through conciliation or mediation. In the event that the dispute(s) are not resolved within 30 (thirty) days from

commencement of conciliation / mediation or such longer period as the Parties may agree in writing, either Party may refer the dispute(s) to a sole arbitrator to be appointed with the mutual written consent of the Parties. The arbitral proceedings shall be conducted as per Arbitration and Conciliation Act, 1996. The seat of arbitration shall be Mumbai, Maharashtra and the arbitral proceedings be conducted in English. Notwithstanding the provisions of this clause, the Parties hereby submit to the exclusive jurisdiction of the Mumbai courts of competent jurisdiction insofar as it relates to obtaining any injunctive or equitable reliefs.”

3. Since disputes arose between the parties, the Applicant vide its letter dated 12th December, 2018 invoked the arbitration agreement. However, despite having received the letter dated 12th December, 2018, the Respondent failed and neglected to respond to the same. 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 the Affidavit proving service dated 13th September, 2019 is on record. Despite service, 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 sole Arbitrator or their nominee in the matter. The Respondent has failed to file the Affidavit in Reply opposing the Arbitration 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 :

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- i. Ms.Kainaz Irani, Advocate is appointed as the sole Arbitrator to decide the disputes between the parties arising out of Marketing Services Agreement dated 31st January, 2018.
 - ii. Ms.Kainaz Irani, Advocate shall file her disclosure under Section 11 (8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 with the office of the Prothonotary and Senior Master within a period of two weeks from today.
 - iii. The venue of the arbitration shall be at Mumbai.
 - iv. The parties and / or their Advocates shall appear before the learned Arbitrator in her chambers on 7th October, 2019 at 5.00 p.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.
5. The Advocate for the Applicant shall forward a copy of this order to Ms.Kainaz Irani, Advocate. A copy of this Order shall also be forwarded to the Respondent by Speed Post AD and / or by hand delivery at their last known address.
6. The above Arbitration Application is accordingly disposed off.

(S.J.KATHAWALLA, J.)