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

ARBITRATION APPLICATION (L.) NO. 452 OF 2019

Prajapati Gunvant Keshavlal

..Applicant

Vs.

Divisional Railway Manager & Ors.

..Respondents

Mr.Mutahhar Khan i/b. Mr.Rajesh Gupta for Applicant.

Mr.Chetan Agrawal with Ms.Jyoti Agrawal for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 22nd OCTOBER, 2019

PC.:

1. Heard learned Counsel for the applicant and learned Counsel for the respondents.
2. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') whereby the applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties which stated to have arisen under the agreement dated 23 February 2012.
3. This is a second round of litigation inasmuch as earlier an arbitral tribunal was appointed, the arbitral tribunal rendered an award (Exhibit C to the petition) dated 18 March 2016 adjudicating the disputes and differences between the parties. The award came to be challenged by the applicant in a petition filed under Section 34 of the Act (Commercial Arbitration Petition no.36 of 2016). The learned Single Judge of this Court (R.D.Dhanuka, J.) by a judgment and order dated 31 July 2019 adjudicated the said petition and set aside the arbitral award on Claim Nos.1, 2, 5, 6, 7, 8, 9A, 9B and 9C while upholding the claim made by the petitioner being Claim nos.3 and 4. The learned Single Judge of this

Court observed that the petitioner would be entitled to invoke arbitration agreement in respect of the claims which were set aside by the said judgment.

4. Accordingly, the petitioner has re-invoked the arbitration agreement by a letter dated 20 August 2019 as addressed to the respondents requesting the respondents to appoint an arbitral tribunal to adjudicate the claims as made by the petitioner and which were set aside by this Court. This request as made by the petitioner being not favourably responded by the respondents, the petitioner is before this Court praying for appointment of arbitral tribunal.

5. Learned Counsel for the petitioner has drawn my attention to the decision of this Court in *Asha Jain Vs. Union of India & Ors.*¹ contending that the respondents would not be entitled now to appoint either railway employee or a retired railway employee as an arbitrator. Mr. Agrawal, learned Counsel for the respondents also fairly would not dispute this submission as advanced on behalf of the applicant.

7. It is not in dispute that there is an arbitration agreement between the parties as also there is an invocation of the arbitration agreement post the award being set aside by this Court vide the petitioner's letter dated 20 August 2019. Accordingly, the arbitral tribunal is required to be appointed to adjudicate the disputes and differences between the parties. Hence, the following order:-

ORDER

(i) Mr. Jimmy Pochkhanwala, Senior Advocate is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the agreement dated 23 February 2012.

- (ii) The learned prospective Sole 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) The fees payable to the arbitral tribunal shall be governed in accordance with the provisions of Bombay High Court (Fees Payable to Arbitrators) Rules, 2018;
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) All contentions of the parties are expressly kept open;
- (vi) The application is disposed of in the above terms. No costs.
- (vii) Office to forward a copy of this order to the learned Arbitrator on the following address:-

“Dunkeld, 3rd floor,
8, J. Mehta Road,
Malabar Hill,
Mumbai-400006.
Contact No. 23635896, 23628884, 23683733
Mobile : 9820035896”

[G.S. KULKARNI, J.]