

Memorandum of Understanding, wherein the disputes and differences arising between the parties relating to or in connection with the matter of this MOU, then such dispute and differences shall be referred to sole Arbitrator, if agreed upon or otherwise to two arbitrators one to be appointed by each party to the dispute and arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The Arbitration shall be conducted in English. The Arbitration shall be held at Mumbai and Courts in Mumbai alone will have jurisdiction in the matter.

4. The learned counsel for the Petitioners has referred to the notice dated 19th November 2019 addressed by the advocates for the Petitioners invoking arbitration under the said clause 8 of the Memorandum of Understanding. The Petitioners have suggested appointment of the Sole Arbitration to settle the disputes between the Petitioners and the Respondents arising out of the Memorandum of Understanding. However, the Respondents have failed to reply to the notice invoking arbitration dated 19th November 2019.

5. The learned counsel for the Petitioners have referred to an order passed by this Court dated 10th February 2020, wherein, Petitioners have sought service on the Respondents, which was returned. Most of the envelopes are unclaimed and one was returned with remarked (refused). The learned advocate appearing for the Petitioners agree to serve afresh. This Court directed the Petitioners to serve the Petition by substitute service by publications in the newspapers subjugated in Vijay Park, Mira Road (East), District Thane-401107 one in English and one in Marathi language and file Affidavit to that effect.

6. The learned counsel for the Petitioners has tendered the Affidavit of Petitioner No.1 dated 15th February 2021, which shows that the Petitioners have pursuant to order dated 10th February 2020, published by way of substitute service on 25th February 2020 in press journal, Daily Newspaper and in Gujarat Samachar, Daily Gujarati Newspaper circulated in Mira Road, District Thane on 25th February 2020.

7. In addition the Petitioners have also published in Navbharat Times, Hindi Daily Newspaper on 25th February 2020, circulated in Mira Road, District Thane, publications are at Exhibit C, D and E of the said Affidavit dated 15th February 2021. He has submitted that in view of the substitute service having been effected and inspite of which the Respondents remain absent, the Arbitration Petition be allowed and the Sole Arbitrator be appointed under Section 11 of the Act.

8. Having considered the submissions of the learned counsel for the Petitioners as well as perusing the Arbitration Agreement under Clause 8 of the said Memorandum of Understanding dated 14th December 2017 and the notice invoking the Arbitration issued by the advocates of the Petitioners dated 19th November 2019 which have not been responded to despite the substituted service being effected on the Respondents and they have remained absent, the Arbitration Petition is required to be allowed. Hence, the following order:-

- (i). Ms. Neeta Jain, the learned advocate of this Court is appointed as a Sole Arbitrator to decide and

adjudicate the disputes amongst the Petitioners and the Respondents arising out of relating to or in connection with the MOU dated 14th December 2017 under clause 8 of the said MOU and in exercise of power under Section 11 of the Arbitration and Conciliation Act, 1996.

- (ii). The venue of Arbitration shall be at Mumbai as per clause 8 of the said MOU dated 14th December 2017.
- (iii). Office to inform the Sole Arbitrator of her appointment.
- (iv). The learned counsel for the Petitioners shall serve this order on the Respondents within a period of two weeks from the date of uploading of this order.
- (v). Appointed Sole Arbitrator is requested to file a disclosure statement under Section 11A and 12(1) of the Arbitration and Conciliation Act, 1996 within a period of three weeks from the date of receipt of intimation with the Registrar (Judicial-I) and provide copies to the parties.

(vi).Parties to appear before the Sole Arbitrator or the date fixed by one.

(vii).Fee applicable to the Sole Arbitrator will be in accordance with the Bombay High Court (Fees payable to Arbitrator) Rules, 2018.

(viii).The Arbitration Petition is disposed of in the above terms. There shall be no order as to costs.

(R. I. CHAGLA, J.)