

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

APPLN. FOR APPOINTMENT OF ARBITRATOR NO. 10 OF 2022

Dylans Enterprises Pvt. Ltd. Rep. By its Director, ... Applicant
Deval Tibrewalla

Versus

Goa Tourism Development Corporation Ltd. Thr. ...Respondent
Its Managing Director

Mr. Jatin Ramaiya, Advocate for the Applicant.

Mr. A. D. Bhobe, Advocate with Ms. S. Shaikh, Advocate for the respondent.

CORAM. G. S. KULKARNI, J
DATED: 4 October, 2022

ORAL ORDER

1. 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 which have arisen between the parties, under Concession Agreement dated 17 November 2017. The arbitration agreement between the parties is contained in Clause 35.3 of the said Agreement. The agreement in question was terminated by the respondent by a termination notice dated 21 October 2021 (Annexure A-8). The applicants by its notice dated 18 August, 2021, invoked of the Concession Agreement, and called upon the respondent to appoint an arbitral tribunal to adjudicate the dispute and differences which have arisen between the parties. As there

was failure on the part of the respondents to appoint an arbitral tribunal, the present application came to be filed.

2. The proceedings were heard on the earlier occasion and today. After some discussions, Shri Bhobe, learned Counsel for the respondents, on instructions, is agreeable that the disputes and differences be referred to arbitration by appointing a sole Arbitrator. Learned Counsel for the applicant would not have any objection for the sole Arbitrator to be appointed although he would submit that the arbitration clause would provide the disputes to be referred for arbitration by a panel of three Arbitrators. As, now the parties have agreed to the disputes and differences to be adjudicated by appointing a sole Arbitrator the arbitration clause providing a three member arbitral tribunal by consent stands modified to the said extent. As there is an arbitration agreement between the parties as also there is a lawful invocation of the arbitration agreement by the applicant and failure on the part of the respondent to agree in appointing an arbitral tribunal, the requirements for this Court to exercise jurisdiction under Section 11(6) of the Act are imminently present. Hence, this application praying for appointment of an arbitral tribunal is required to be allowed.

3. Mr. Bhobe, at this stage, has submitted that all contentions of the respondents before the arbitral tribunal be kept open to be agitated by the applicant. Needless to observe, that all contentions of the parties are

expressly kept open, considering the view taken by this Court in paragraph 54 in *Consortium comprising of Larsen & Toubro Limited & anr. vs. Mumbai Metropolitan Regional Development Authority*¹, which reads thus,

“54. As extensively noted above, the principal argument as urged on behalf of the respondents, that the applicants have not complied with clause 20.1 of the GCC and which is condition precedent for invocation of the arbitration agreement cannot be accepted. In any event, an arbitral tribunal is not precluded from examining the issue of arbitrability of the disputes and an objection in the nature as urged on behalf of the respondent can certainly be examined by the arbitral tribunal. It is well-settled that all issues on arbitrability are required to be gone into by the arbitral tribunal.”

4. On behalf of the Respondent it is suggested that Panaji would be an appropriate place of arbitration. Considering the provisions of Section 20 of the Arbitration and Conciliation Act, the arbitral tribunal is free to decide the venue of the arbitration. The application is accordingly required to be disposed of. Hence, the following Order :

ORDER

(i) *Mr. A. P. Lawande, Former High Court Judge is appointed as a sole Arbitrator to adjudicate the*

¹ 2019 SCC OnLine Bom 1345

disputes between the parties which have arisen under the Concession Agreement dated 17 November 2017.

(ii) The learned sole Arbitrator, before entering the arbitration reference, shall make a declaration under Section 11(8) read with Section 12(1) of the said Act to be placed on record of the present proceedings and furnish a copy thereof to the parties.

(iii) All contentions of the parties on merits of the arbitral proceedings are expressly kept open.

(iv) The parties are directed to appear before the learned Arbitrator within a period of 15 days from today on a date which may be mutually convenient and as may be fixed by the learned sole Arbitrator.

(iv) The fees of the arbitral tribunal shall be governed by Schedule IV of the Act.

5. A copy of the said order shall also be forwarded to the learned Arbitrator to the following address :

*Residence : F-101, Sattadhar, Basilio's Complex,
St. Inez, Panaji – Goa – 403 001.*

6. The application is disposed of in the above terms. No costs.

G. S. KULKARNI, J