

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

**APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO. 18 OF 2022**

GEETA ARUN NAIK ... APPLICANT

VS

KRISHNANATH BABURAO NAIK AND
BROS REP. BY ITS MANAGING PARTNERS

VIVEK NAIK AND 2 ORS. ... RESPONDENTS

Mr. Venkatesh R. Bhagat with Mr. Nihal P. Kamat and Mr.
Roshan P. Tarikar, Advocates for the Applicant.

Mr. C.A. Coutinho with Mr. Ivan Santimano, Advocates for
Respondent Nos. 2 and 3.

CORAM: G.S. KULKARNI, J.

DATED: 6 DECEMBER 2022

P.C.

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 for adjudication of the disputes and differences between

the parties, which have arisen under an agreement, Memorandum of Understanding dated 28 May 2014 (for short, “the MoU”).

2. The arbitration agreement between the parties is contained in clause 9 of the said MoU, which reads thus:–

“9. In the event of any dispute or difference or questions arising between the parties hereto, or between any of them and the successors-in-title and/or heirs and/or legal representatives of the other or others, arising out of and/or in connection with and/or in relation to and/or in consequence of and/or concerning and/or howsoever touching this Agreement and/or the spirit thereof, or any of the terms, clauses or things herein contained, or as to the rights, duties and liabilities of the parties hereto under these presents, whether during the continuance of this Agreement or after, then the same shall be referred to the Arbitration of one person to be nominated by the VENDORS. The PURCHASER/PURCHASERS shall not be entitled to object to such nomination or the Award that may be passed by such Arbitrator on the ground that his nomination was done by the VENDORS. Such Arbitration shall, save and except to the extent as hereinafter provided, be governed by the provisions of the Arbitration & Conciliation Act, 1996 and any statutory modification thereto or re-enactment thereof, in force at the time the Arbitrator is nominated. In the event any such dispute arises prior

to possession of the said premises being handed over to the PURCHASER/PURCHASERS, then the VENDORS shall be entitled to withhold such delivery until the dispute is resolved by Arbitration and the VENDORS shall not be liable in any manner for withholding such delivery.”

3. By a notice dated 7 June 2022, the applicant in terms of Section 21 of the Act invoked the arbitration agreement and called upon the respondents to appoint an Arbitrator. The notice also suggested the name of the proposed Arbitrator. The said notice of the applicant was replied by the respondents by their Advocate's letter dated 8 July 2022. In such letter, in paragraph 7, the respondents stated that they were not agreeable to appoint an Arbitrator as suggested on behalf of the applicant. The respondents also stated that the applicant shall not proceed to appoint the said Arbitrator.

4. In the above circumstances, as there was no consensus between the parties to appoint an arbitral tribunal, the present application praying for appointment of an arbitrator was filed. The proceedings were listed before the Court on 4 October 2022, when the Court considering the law laid down by the Supreme Court in **Garware Wall Ropes Limited Vs. Coastal Marine**

Constructions & Engineering Limited¹ as also, the decision of this Court in **B4U Broadband (India) Pvt. Ltd. Vs. Affluence Movies Pvt. Ltd.²**, the Court had impounded the MoU in question considering the objections as raised on behalf of the respondents that the document (MoU) was not sufficiently stamped. The proceedings were accordingly kept in abeyance.

5. It is informed by the learned Counsel for the applicant that the stamp authority has now valued the document and the requisite stamp duty on the MoU has now been paid. The MoU is thus sufficiently stamped. It is hence submitted that the objection of the respondents on the legal impediment to pass an appropriate order on the present proceedings, no more survives. The learned Counsel for the respondents would fairly state that if the the document is sufficiently stamped then this Court can proceed to adjudicate the application and pass appropriate orders appointing an arbitral tribunal.

6. As there is no dispute on the arbitration agreement as also, on the invoking of the arbitration agreement, as clearly seen from

1 2019 SCC Online SC 515

2 2022 SCC Online Bom 1021

the applicant's Advocate's letter dated 7 June 2022 and as the requirements under Section 11(6) of the said Act, for this Court to exercise jurisdiction are imminently present, this application for appointment of Arbitrator is required to be allowed. It is accordingly allowed by the following order:-

O R D E R

- (a) Justice F. M. Reis, Former Judge of this Court, is appointed as a sole Arbitrator to adjudicate the disputes between the parties, which have arisen between the parties under the MoU dated 28 May 2014.
- (b) 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.
- (c) 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.
- (d) The parties have agreed that the seat and venue of the arbitration shall be at Margao-Goa.

- (e) The fees of the arbitral tribunal shall be as may be fixed by the learned Arbitrator in consultation with the parties.
- (f) The claimant shall file the statement of claim within 15 days from when the parties first appear before the learned Arbitrator.
- (g) All contentions of the parties on merits are expressly kept open.

7. Disposed of. No costs.

G.S. KULKARNI, J.

VAIGANKAR
ESHA SAINATH

Digitally signed by VAIGANKAR ESHA SAINATH
Date: 2022.12.07 20:05:53 +05'30'