

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**APPLICATION FOR APPOINTMENT OF ARBITRATOR NO. 5 OF 2022**

PCI PEST CONTROL PVT. LTD., REP. BY ITS  
BRANCH MANAGER, VIJAY G. KATARIA ...APPLICANT.

VS

GOAN HOTELS AND REALTY PVT. LTD.,  
THR. ITS AUT. OFFICER ...RESPONDENT.

*Mr. G. Agni, Advocate for the applicant.*

*Mr. R. Rao, Advocate for the respondent.*

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**CORAM: SANDEEP K. SHINDE, J.**

**DATE: 29th June, 2022.**

**ORAL ORDER**

**1.** Heard Mr. G. Agni, learned Counsel for the Applicant and Mr. Rao, learned Counsel for the Respondent.

**2.** This is an application for appointment of arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, (for short '*Act of 1996*').

**3.** There is no dispute that the applicant and the respondent had

entered into an agreement on 01.8.2017, by which the Respondent had availed and engaged services of the Applicant for rendering Pest Control Services. Certain disputes have arisen between the parties. For that reason, to recover unpaid service bills, Applicant had instituted Regular Civil Suit No. 7/2019/D, against the Respondents in the Court of Civil Judge, Junior Division, Panaji. The maintainability of the suit was objected to, by the Respondent in view of Arbitration clause in Agreement dated 01.08.2017 and clause 16 of Work Order dated 07.07.2017. As a consequence, Applicant vide notice dated 11.05.2019, invoked Arbitration Clause no. 7.3 of the Agreement dated 01.08.2017, which reads as under :

*7.3 In the event of any dispute or differences arising out of or in connection with this agreement including the interpretation of the terms and conditions of this agreement, the same shall be referred to the sole arbitration of the General Manager of the hotel. The parties hereto further agree that the decision of the named sole arbitrator shall be final and binding on them and they shall not dispute or raise objection on correctness of decision of the so named sole arbitrator. Any dispute or difference which may arise between the parties in*

*connection with this agreement and which cannot be settled amicably, shall be finally settled by arbitration as per the provisions of The Arbitration and Conciliation Act, 1996, the venue of such arbitration shall be Goa;*

and proposed to respondents name of retired District Judge to be their sole arbitrator to arbitrate their dispute.

4. Notice was responded by the Respondents contending that the Applicant could not have invoked arbitration clause, reason being, at the material time, the suit instituted by the Applicant against the Respondents on the same cause of action, was pending before the Court of Civil Judge, Junior Division. In fact, this application was also resisted by the Counsel for the Respondent on the very ground and additionally relied on the judgments of this Court in the case of *D. K. Infrastructure Pvt. Ltd. vs. Kishore Agarwal & anr.*,<sup>1</sup> contending that the dispute is non-existent and has become deadwood.

5. So far as jurisdiction of Court under Section 11 of the Act of 1996 is concerned in the case of *Duro Felguera SA vs. Gangavaram*

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<sup>1</sup> Arbitration Application No. 59 of 2022

*Port Ltd.*,<sup>2</sup> the Apex Court has held that after the amendment, all that the Court needs to see is whether the arbitration agreement exists – nothing more, nothing less. Thus in context thereof observed that legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6A), ought to be respected.

6. Therefore, while exercising jurisdiction under Section 11 of the Act of 1996, what is relevant is the existence of the arbitration of the Agreement and further that the disputes arising from the Agreement, are amenable to arbitration. In this case, all necessary elements to exercise the power under Section 11(6) of the Act, of 1996 are adequately satisfied. The application therefore deserves to be allowed.

7. Hence, the following order :

**ORDER**

(i) Mr. J. P. Mulgaonkar, Senior Advocate, of this Court, is appointed as sole Arbitrator to arbitrate the disputes/claim and counter claims, if any, which arise

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<sup>2</sup> 2017 (9) SCC 729

out of the Agreement dated 01.08.2017 and Work Order dated 17.07.2017.

(ii) The learned Arbitrator is requested to file his disclosure statement under Section 11(8), read with Section 12(1) of the Act of 1996, within three weeks with the Registry of this Court and provide copies to the parties.

(iii) Parties to appear before the sole Arbitrator on the date fixed by him at his earliest conveyance .

(iv) The application is allowed and disposed of in the aforesaid terms.

(v) It is clarified that this Court has not gone into the merits and demerits of the disputes between the parties and therefore, all contentions of the parties on merits are left open for decision of the Arbitrator in accordance with law and on its own merits.

Para 7(v) incorporated  
Vide order dated  
12.07.2022  
Passed in MCA No.  
1476 of 2022(F)

**SANDEEP K. SHINDE.J.**

ANDREZA PEREIRA  Digitally signed by ANDREZA PEREIRA  
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