

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 44 OF 2022

Mr.Dinesh Patel & Anr. ..Petitioners
vs.
Crystal Lace (India) Ltd. ..Respondent

Mr.Rakesh Reddy Patil i/b. Mr.Mahadji Phalke, for the Petitioners.

Mr.Brayan Pillai i/b. Shardul Amarchand Mangaldas & Co., for the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : AUGUST 24, 2022.

PC.:

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act,1996 (for short 'the Act') whereby the petitioners seek appointment of an arbitral tribunal for adjudication of the disputes and differences which have arisen between the parties under the Memorandum of Understanding dated 13 August 2007. The arbitration agreement between the parties is not in dispute which is contained in clause No.18 of the Memorandum of Understanding in question. It also appears that the petitioners had approached the Court of Principal District Judge, Thane, in an interim application filed under Section 9 of the Act which came to be decided by the learned District Judge by an order dated 16 April 2019("Exhibit C" to the petition), partly allowing such application.

2. The petitioners, thereafter, by their Advocate's notice dated 8 December 2021 invoked the arbitration agreement and sought

appointment of an arbitral tribunal. As the respondent did not agree for appointment of an arbitral tribunal, the present proceedings came to be filed.

3. The respondents have appeared, they are represented by Advocate Mr.Brayan Pillai. Learned Counsel for the respondent would fairly state that his client would not dispute existence of the arbitration agreement as also the invocation of arbitration agreement. The only opposition of the respondent is in regard to the claim of the petitioners being time barred. Learned Counsel for the respondent, however, states his clients would not have any objection for the disputes being referred to adjudication by appointing an arbitral tribunal. In my opinion, such contention on the claims being barred by limitation can certainly be urged by the respondent before the arbitral tribunal, inasmuch as the issue of limitation is a mixed question of law and fact.

4. Thus, as there is no dispute in regard to existence of an arbitration agreement between the parties as also there is proper invocation of the arbitration agreement, as also respondent has consented for appointment of an arbitral tribunal. The petition is accordingly disposed of in the following terms:-

ORDER

(i) Mr.Nimay Dave, Advocate of this Court is appointed as a sole Arbitrator to adjudicate the disputes and differences between the parties under the Memorandum of Understanding dated 13 August 2007.

(ii) The learned sole prospective 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 Registrar (Judicial) of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties;

(iii) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018, and the fees shall be borne by the parties in equal proportion.

(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 on merits of the matter, including the contention of the respondent in regard to limitation, are expressly kept open;

(vi) The petitions 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:

103, First Floor, Oval House,
British Hotel Lane, Off.N.M.Road,
Kala Ghoda, Fort, Mumbai-400001.
E-mail ID: nimaydave@gmail.com

[G.S. KULKARNI, J.]