

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.63 OF 2020

Mr.Gajendra Sopanrao Patil & Anr. ..Petitioners
vs.
Mr.Dattatray Baliram Mule & Ors. ..Respondents

Mr.Hemant Ghadigaonkar, for the Petitioners.

Mr.Vivek Patil with Mr.Shailesh D.Chavan, for Respondent Nos.2 to 4.

CORAM : G.S. KULKARNI, J.

DATE : AUGUST 10, 2022.

P.C.:

1. This is a petition filed under section 11 of the Arbitration and Conciliation Act, 1996 (for short “**the Act**”) whereby the petitioner has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties, which have arisen under the Deed of Partnership dated 27 June 2011 and the subsequent Deed of Reconstitution of Partnership dated 20 June 2014. There is an arbitration agreement between the parties, which is contained in Clause 22 of the Deed of Partnership which reads thus:

“22. ARBITRATION

21.1 Any dispute involving firm unless mutually settled shall referred to two Arbitrators’ Bench, First party shall appoint one arbitrator and Party of Section Part to Fourth part shall appoint second arbitrator and arbitrator’s so elected shall appoint one umpire.

21.2 The Award of arbitration will be final and binding

on the parties to arbitration.

21.3 Arbitration will be carried as per Arbitration and Conciliation Act in force.”

2. In so far as the Deed of Reconstitution of Partnership dated 20 June 2014 is concerned, the arbitration clause is contained in Clause 20 which reads thus:-

“20. In case of any dispute arising between the parties hereto as regards the business of the firm or the interpretation of these present, the same shall be referred to arbitration under the Indian Arbitration Act as in force on that date and decision of the arbitration shall be final and binding on the parties hereto.”

3. Disputes and differences have arisen between the parties who are the partners in the partnership firm in question. Consequent thereto by a notice dated 20 January 2020 issued by the petitioners through their advocate, the petitioners invoked the arbitration agreement as contained in clause no.20 of the Deed of Reconstitution of Partnership whereby a request was made to the respondents to refer the disputes in regard to the outstanding payments due and payable to the petitioner, by appointing an arbitrator. The name of the proposed arbitrator was also set out in paragraph 20 of the said letter, however, the respondent did not respond to such request. Hence, the present petition has been filed.

4. It appears to be quite clear from the contents of paragraphs 7 and 8 of the said notice invoking the arbitration agreement that the foundation of the dispute is the MOUs dated 16 December 2017 and 15

February 2018 which were entered between the parties. The invocation of the arbitration is solely under the partnership deed in question.

5. The respondents by their letter dated 6 February 2020, replied to the petitioners' invocation notice disputing the contention as urged on behalf of the petitioners. It is pertinent to note the statements as made in paragraphs 10, 11 and 12 of the reply which read thus:-

“10. We deny that your clients have already invoked the arbitration clause let alone before or at the time of filing of Misc. Application No.968/2019. We deny that we have not filed our reply to the said Misc. Application. Your clients have already received copy of our say. We deny that your clients ever even tried to resolve the dispute amicably. We deny that your client have no alternative but to refer the dispute to arbitration.

11. We do not agree upon the name of Mr.Prasanna S. Darade, Advocate as a sole arbitrator for deciding the dispute amongst your clients and us. Said Advocate Prasanna Darade is your advocate for drafting of your agreements amongst other things and is an interested party.

12. We are not liable to pay any notice charges as demanded by you.”

6. This apart in the subsequent letter dated 12 February 2020 addressed by the respondents' Advocate to the petitioners' Advocate, the respondents have taken a clear stand that there are no disputes and hence, there is no question of appointing a sole arbitrator to adjudicate the disputes and differences which have arisen between the parties. The relevant contents in paragraph 2 and 3 need to be noted which reads thus:

“2. Shortly stated my client however denies that there is any arbitral dispute for being referred to sole arbitrator as claimed by your client. The question therefore, of appointment of any person, much less, Advocate Prasanna S. Darade, does not at all arise, nor my client has any reason to accord any such consent, as sought by

your client. Therefore, my client hereby refused to accept Advocate Prasanna S. Darade as an arbitrator to resolve so called dispute.

3. While thus denying the claims and allegations or existence of any arbitral dispute and for appointment of Arbitrator, your client is better advised not to initiate any vexatious, baseless or incorrect action, on the basis of grievances, which in any case, shall entirely be at the risk of your client, as to cost, consequences and expenses thereof, of which, kindly ask your client to take a serious note.”

7. It clearly appears from the position taken by the respondents that the respondents never disputed the existence of the arbitration agreement between the parties. All the issues whether there exists any dispute between the parties, whether the claim has been made by the petitioners is maintainable, are all issues which would be subject matter of adjudication before the arbitral tribunal. The jurisdiction of this Court is limited to the extent of examination of existence of the arbitration agreement. The law in this is well settled. (**See: Duro Felguera S.A. Vs. Gangavaram Port Ltd., reported in (2017) 9 S.C.C. 729; M/s.Mayawati Trading Pvt.Ltd. Vs. Pradyut Deb Burman, (2019)8 SCC 714**)).

8. On behalf of the respondents it is urged that the entire basis of the disputes between the parties, if any, are the MOUs dated 16 December 2017 and 15 February 2018. Such MOUs if at all are subject matter of dispute between the parties on merits.

9. In the present case, as noted above, clearly there is an existence of an arbitration agreement, also there is invocation of the arbitration agreement by a notice as issued by the petitioners' Advocate being

notice dated 20 January 2020 which has been duly replied by the respondents, not disputing its existence. In these circumstances, in my opinion, there is sufficient material on record for this Court to exercise jurisdiction under Section 11(6) of the Act for appointing an arbitral tribunal.

10. In the above circumstances, in my opinion, keeping open all contentions of the parties on merits of the disputes, the parties are required to be referred to arbitration by appointing an arbitral tribunal. The petition is accordingly disposed of by the following order:-

ORDER

(i) Mr..Pramod Dattatraya Ambekar, Retired District Judge is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Deed of Partnership dated 27 June 2011 and the subsequent Deed of Reconstitution of Partnership dated 20 June 2014.

(ii) The learned sole arbitrator, 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 Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) 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 learned sole arbitrator;

(iv) All contentions of the parties on the MOUs dated 16 December 2017 and 15 February 2018 are expressly kept open.;

(v) Even otherwise all contentions of the parties on merits and as falling under the Deed of Partnership in question are expressly kept open;

(vi) The fees payable to the arbitral tribunal shall be the fees as prescribed under the Bombay High Court (Fees payable to arbitrators) Rules, 2018;

(vii) The application is disposed of in the above terms. No costs.

(viii) Office to forward a copy of this order to the learned Arbitrator on the following address:

“Magapolis SPARKLET Flat No.A/7-1403,
Phase 3, Rajiv Gandhi Infotech Park,
Hinjawadi, Pune 411057.
Mobile: 9029082532, 9082520036.”

[G.S. KULKARNI, J.]