

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 50 OF 2022

Mr.Nauzar Adi Bharucha.

..Petitioner

vs.

Mr.Boman Adi Bharucha & Ors.

..Respondents

Mr.Hemant Ghadigaonkar, for the Petitioner.

Mr.Manoj Gadkari, for the Respondents.

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 seeks appointment of an arbitral tribunal for adjudication of the disputes and differences which have arisen between the parties under the Deed of Partnership dated 30 September 2017 executed at Pune. The arbitration agreement between the parties under the Deed of Partnership is contained in Clause 14 (page 33).

2. Without discussing the nature of the disputes, it is suffice to observe that on the backdrop of the extensive correspondence between the parties, the petitioner by his Advocate’s notice dated 15 January 2022 invoked the arbitration agreement, thereby suggesting the names of the proposed arbitrators from amongst whom, an arbitrator could be appointed to adjudicate the disputes. Such a notice of the petitioner’s Advocate was replied by the respondents by their Advocate’s letter dated 2 February 2022. As stated in paragraphs 2 and 3 of such letter the respondents did not agree to any name of the proposed arbitrator as

suggested by the petitioner, however, the respondents suggested names of other two proposed arbitrators, contending that amongst them a sole arbitrator can be appointed to adjudicate the disputes and differences between the parties.

3. I have heard learned Counsel for the parties. I have also perused the reply affidavit as filed by the respondents. There clearly appears to be no dispute in regard to existence of the arbitration agreement between the parties as noted above.

4. Learned Counsel for the respondents however referring to the reply affidavit of his clients, has submitted that the dispute itself is not arbitrable as the disputes as raised by petitioner is basically on the income tax dues which are personal to him and which would not be any dispute under deed of partnership. Learned Counsel for the petitioner on the other hand would dispute such contention of the respondents and would submit that the invocation notice itself clearly indicates that the dispute between the parties is interalia on accounts of the partnership firm. It is submitted that there are disputes between the parties on issues falling under the partnership deed, including the respondents' conduct in not providing books of accounts which according to him, was pointed out and referred in the correspondence exchanged between the parties.

5. Be that as it may, the jurisdiction of the Court in considering the application under Section 11 of the Act would be limited to the existence of the arbitration agreement. In the present case it appears that there is no dispute on the existence of an arbitration agreement between the parties. As also there is appropriate invocation of the arbitration agreement by the petitioner and in fact, the respondents themselves have suggested the names of the proposed arbitrator in not

agreeing to the names of the proposed arbitrator as suggested on behalf of the petitioner. In so far as the respondents' contention that the disputes are not arbitrable, in my opinion, such contentions are required to be raised before the arbitral tribunal, as may be permissible to the respondents in law, including by making an application under Section 16 of the Act. Also it would be permissible for the petitioner to defend any such application.

6. As a result of the above discussion and in view of the fact that there exists an arbitration agreement between the parties as also there is an appropriate invocation of the arbitration agreement by the petitioner by issuing notice dated 15 January 2022, and the failure of the respondents in mutually agreeing to appoint an arbitral tribunal, the requirement for this Court to exercise jurisdiction under Section 11(6) of the Act to appoint an arbitral tribunal, imminently exist. Hence, the following order:-

ORDER

(i) Mr. Anand P. Lavate, Advocate, is appointed as a sole Arbitrator to adjudicate the disputes and differences between the parties under the Deed of Partnership dated 30 September 2017;

(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 application with a copy to be forwarded to both the parties;

(iii) The fees of the arbitration shall be borne in equal proportion.

(iv) At the first instance, the parties shall appear before the prospective arbitrator on a date which may be mutually fixed by the prospective sole arbitrator;

(v) All contentions of the parties on merits of the matter are expressly kept open;

(vi) The petition 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:

Flat No.2, Shubha Apartments,
Erandwane, Opp. Manohar Manual Karyalaya,
Pune-411004.
Mob. 9422646355
E-mail: advlavate@gmail.com

[G.S. KULKARNI, J.]