

M/s. Frankel's Infotech
Thr. Proprietor Mr.Pankal Gul Jagasia ...Petitioner
Vs.

Ishwar Construction Pvt. Ltd.
Thr. Chief Managing Director,
Mr.Ishwar Chandulal Parmar & Ors. ...Respondents

Mr. Akshay Nair i/b. Agama Law Associates, for the Petitioner.
Mr. Drupad S. Patil, for the Respondents.

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CORAM : C.V. BHADANG, J.
DATE : 21 SEPTEMBER 2022

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This petition is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

2. The first Respondent is a Private Limited Company incorporated under the Companies Act, 1956 and is carrying on business as Promoter / Developer / Builder. The second Respondent is the Chief Managing Director while the third Respondent is the Director of the first Respondent.

3. The Respondents had proposed to construct a residential-cum-commercial building at Plot No.806 and 806-A, Shivaji Nagar, Bhamburda, Pune. The Petitioner had purchased a commercial unit therein and accordingly a “Investors Memorandum of Understanding” dated 18 January 2017 was executed between the parties.

4. According to the Petitioner, the Respondents failed and neglected to execute the agreement of sale for the said premises within the time stipulated under the MoU inspite of repeated correspondence by the Petitioner.

5. It appears that yet another Memorandum of Understanding (MoU) was executed between the parties on 23 October 2018 which contained an arbitration agreement as per Clause No.8. Even thereafter, the Respondents did not act in accordance with the MoUs, as a result of which, the Petitioner by virtue of a notice dated 29 October 2020, invoked the arbitration clause contained in MoU dated 23 October 2018 and unilaterally appointed a sole arbitrator to adjudicate the dispute between the parties.

6. The Respondents issued a reply dated 16 December 2020 disputing the unilateral appointment of the arbitrator.

7. According to the Petitioner, the Respondents also proposed to negotiate for an amicable settlement, as a result of which, the Petitioner agreed to discontinue the arbitration proceedings. Consequently, as per the minutes recorded on 27 February 2021, the arbitration proceedings were closed. Even thereafter, the parties could not reach an amicable settlement and the disputes and differences continued which has led the Petitioner to file this petition.

8. I have heard the learned counsel for the parties. Perused record.

9. The MoU dated 23 October 2018 contains the following Clause 8 :

8) Any dispute, difference, controversy or claim ("Dispute") arising between the Parties out of or in relation to or in connection with this Agreement, or the breach, termination, effect, validity, interpretation or application of this Agreement or as to their rights, duties or liabilities hereunder, shall be settled by the Parties by mutual negotiations and agreement. If, for any reasons, such Dispute cannot be resolved amicably by the parties, the same shall be referred to and settled by way of arbitration proceedings by the Sole Arbitrator to be nominated

by the Second Party. The arbitration proceedings shall be held in accordance with the Arbitration and Conciliation Act, 1996, or any subsequent enactment or amendment thereto (the “Arbitration Act”). The decision of the arbitrators shall be final and binding upon the parties. The venue of arbitration proceedings shall be at a place within the city of Pune, as may be mutually decided by the parties inter se. The language of the arbitration and the award shall be English”.

It can thus be seen that the parties had agreed for referral of the dispute to the arbitrator except that the clause provides for unilateral appointment which is not permissible in view of the decision of the Supreme Court in *Perkins Eastman Architects DPC and Anr. Vs. HSCC (India) Limited*¹.

10. The fact remains that there is an underlying agreement between the parties, for referral of the dispute to an Arbitrator. The parties have now agreed for referral of the dispute to an Arbitrator as may be appointed by this Court.

11. In such circumstances, the following order is passed.

ORDER

(i) Smt. Justice R. P. Sondur Baldota, Former

¹(2020) 20 SCC 760

Judge of this Court is appointed as a Sole Arbitrator to adjudicate the dispute between the parties.

(ii) The learned Sole Arbitrator, before entering the arbitration reference, shall forward a statement of disclosure as per requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar (Judicial-I) of this Court.

(iii) At the first instance, the parties shall appear before the prospective Arbitrator within a period of three weeks from today on a date which may be fixed by the learned Sole Arbitrator.

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

(v) Rival contentions of the parties are kept open.

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

“Smt. Justice R. P. Sondur Baldota,
Office :- C/o. Group Intelmac,
S. No.100/5, Ambegaon, Pune – 411 046.
Res.:- 99/1/B Ambegaon Kd, Near
Swaminarayan Temple, Ambegaon,

Pune – 411 046. ”

C.V. BHADANG, J.