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

ARBITRATION PETITION NO. 112 OF 2021

BNY Mellon International Operations
(India) Pvt. Ltd.

...Petitioner

Versus

Vrushali Dhumal

...Respondent

* * *

- Mr. Dharmesh Jain i/by Mr. Anil Agarwal, for the Petitioner.
- None for the Respondent.

* * *

CORAM : MANISH PITALE, J

DATE : 19TH OCTOBER, 2022.

P. C. :

1. By this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner has approached this Court seeking appointment of sole Arbitrator for adjudication of disputes between the parties.

2. The petitioner and the Respondent entered into a Services Agreement dated 04th August, 2015, whereby the Respondent was to provide certain services to the petitioner. The said agreement contained an Arbitration Clause at clause No. 17(iii). Subsequently by another Agreement dated 18th April, 2017, the Arbitration Clause was substituted, among other things, specifying the seat of Arbitration as Mumbai. Thereafter by a further agreement dated 11th January, 2018, the Arbitration clause was substituted as follows :

Clause 17 (iii) of the Agreement shall be replaced in

earlier as set out below :

“(iii) Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity of termination, shall be referred to and finally resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as amended (“Arbitration Act”). The number of arbitrators shall be one, to be jointly appointed by the Parties, failing which an arbitrator will be appointed in accordance with the Arbitration Act. The seat, or legal place, of arbitration shall be Pune. The language to be used in the arbitration shall be English.”

3. It is significant that while in the earlier clauses the seat of Arbitration was Mumbai, as per the amended clause under the Agreement dated 11th January, 2018, the seat of Arbitration was specified as Pune. It is undisputed that the above quoted clause is indeed the Arbitration clause, which the petitioner invoked by letter dated 04th May, 2021, sent to the Respondent. By this letter, the petitioner proposed appointment of one Mr. Viraj Jagdish Parekh, Advocate, Mumbai as the sole arbitrator.

4. The proprietary concern of the Respondent sent an email on 11th May, 2021, in response to the aforesaid letter of the petitioner, and stated that the claims of the petitioner were not based on complete information and that as such, the claims were not acceptable to the Respondent. There was no comment made on the

Arbitrator proposed to be appointed on behalf of the petitioner. In these circumstances, the petitioner was constrained to approach this Court by filing the present petition. The Respondent was privately served and an affidavit of service is also placed on record. On 25th October, 2021, this Court issued notice to the Respondent. The record shows that the notice has been duly served. But, the Respondent has chosen not to appear before this Court.

5. In this backdrop, the learned Counsel for the petitioner relied upon the substituted Arbitration clause and the invocation of the same by letter dated 04th May, 2021. He submitted that since the Respondent had chosen not to respond the notice issued by the petitioner and also failed to appear before this Court despite service of notice through the Court, this Court may consider appointing the person proposed by the petitioner as the sole Arbitrator, as per letter dated 04th May, 2021.

6. But, the substituted Arbitration clause quoted above, clearly shows that the place of Arbitration has been agreed upon as Pune, while the person nominated on behalf of the petitioner to be appointed as the sole Arbitrator is at Mumbai. In the absence of the Respondent and an agreement between the parties to change the place of Arbitration, to a place other than the place agreed in the substituted Arbitration clause quoted above, it would not be

appropriate for this Court to agree with the petitioner for appointment of the Arbitrator as proposed in the letter dated 04th May, 2021.

7. Since the place of Arbitration has been specified as Pune, Hon'ble Smt. Dr. Justice Shalini Phansalkar-Joshi, Former Judge of this Court, who is at Pune can be appointed as the Arbitrator. The petitioner is agreeable to the aforesaid name.

8. In view of the above, Hon'ble Smt. Dr. Justice Shalini Phansalkar-Joshi is appointed as the sole Arbitrator for adjudication of the disputes between the parties in the present case. The contact details of the proposed Arbitrator are as follows :

Hon'ble Smt. Dr. Justice Shalini Phansalkar-Joshi

Address at Mumbai

C/o. Mridula Bhatkar, 501 Saket, M.B. Raut Marg,
Near Balmohan Vidya Mandir, Shivaji Park, Dadar (W)
400025, Mumbai

Address at Pune

Bungalow No. 12, Bhagya Chintamani Nagar, Poud Road,
Kothrud, Pune - 491 038.

Mob. No. 9657188676

Emai : phansalkar.joshi@gmail.com

9. The learned Arbitrator is requested to communicate her consent and Disclosure Statement as per Section 11(8) r/w 12(1) of the said Act to the Registrar Judicial of this Court within four weeks.

The party shall appear before the learned Arbitrator on 28th November, 2022 at 04.30 p.m. Since the Respondent has not appeared before this Court, the learned Arbitrator shall issue notice to the Respondent.

10. The Fees of the learned Arbitrator shall be as per Schedule IV to the aforesaid Act.

11. The petition stands disposed of.

(MANISH PITALE, J.)