

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
IN
COMMERCIAL ARBITRATION APPLICATION NO.44 OF 2022

Elpro International Ltd.Applicant

vs.

Shripal Morakhia And 2 Ors. ...Respondents

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Mr. Shayan Dasgupta, a/w. Mr. Taha Mirza, i/b. Khaitan & Co., for the Applicant.

Ms. Neha Patil, i/b. Mr. Akshay Vijay Kamble, for Respondent Nos. 1 and 2.

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CORAM : BHARATI DANGRE, J.

DATE : 16 DECEMBER 2022

P.C.:

The share subscription agreement dated 23rd April 2018 entered between the Applicant, described as “Qualified Investor III”, and “the Company, along with its two Promoters”, contain a clause for dispute resolution in form of clause no.9, which reads thus:--

“9. Dispute Resolution

9.1 If any dispute arises amongst the Parties hereto during the subsistence of this Agreement or thereafter, in connection with the validity, interpretation,

implementation or alleged material breach of any provision of this Agreement or the Amended AOA or regarding a question, including the questions as to whether the termination of this Agreement has been legitimate, the Parties shall endeavour to settle such dispute amicably.

9.2 In the case of failure by the Parties to resolve the dispute in the manner set out above within 30 (thirty) days from the date when the dispute arouse, the dispute shall be referred to a panel of three arbitrators, with the Promoters (for self and the Company) nominating one arbitrator, the Qualified Investor III nominating one arbitrator and the arbitrators so appointed jointly nominating a third presiding arbitrator. The seat and venue of the arbitration shall be Mumbai, India. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 and any rules made thereunder and shall be conducted in the English language. The arbitrator shall also decide on the costs of the arbitration proceedings.

9.3 The arbitrator's award shall be substantiated in writing and the Parties shall be bound by such arbitral award.”

2. It is informed that Respondent No.3 is undergoing process of CIRP under the IBC Code.

3. The learned Counsel for the Applicant and the learned Counsel appearing for Respondent Nos. 1 and 2 state that since the arbitration clause in the share subscription agreement is not in dispute, they have agreed for appointment of a Sole Arbitrator to resolve the

dispute that has arisen between the Applicant and Respondent Nos. 1 and 2 as promoters. They have expressed their consensus for being referred to a Sole Arbitrator, Mr. Kunal S. Vaishnav, a practising Advocate of this Court.

4. In the wake of the aforesaid circumstances, I pass the following order:

- (i) Advocate Kunal S. Vaishnav, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above;
- (ii) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded;
- (iii) The learned Arbitrator, within a period of 15 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 Prothonotary & Senior Master of this Court, to be placed on record of this application, with a copy to be forwarded to both the parties;
- (iv) The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing within period of four weeks from his appointment. The Arbitral Tribunal shall give all

further directions with reference to the arbitration and also as to how it is to proceed;

- (v) Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates;
- (vi) The Respondents are at liberty to raise all questions of jurisdiction within the meaning of Section 16 of the Arbitration Act. All contentions are left open;
- (vii) Parties agree that the arbitral costs and fees of the Arbitrator shall be borne by them in equal portion and shall be subject to the final Award that may be passed by the Tribunal;
- (viii) Parties agree that the venue and seat of the arbitration will be in Mumbai;
- (ix) These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration;

5. The commercial arbitration application stands disposed of in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)