

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO. 111 OF 2020

Philip Anthony .. Applicant

Vs.

Saira William Salvez & Ors. .. Respondents

Mr. Rakesh Agrawal a/w. Savleah Shaikh, Darpan Jain for the applicant.
Mr. Pritesh Burad a/w. Khushboo Rajgor, Lekha Bafna i/b. Pritesh Burad
Associates for the respondents.

CORAM : G.S. KULKARNI, J.

DATE : JUNE 8, 2022.

P.C.:

1. Heard learned counsel for the parties on this application under section 11 of the Arbitration and Conciliation Act. The dispute between the parties have arisen under the Deed of Partnership dated 12 February, 2002. The applicant is one of the partners. The other partner Mr. William Joseph has expired on 23 November, 2019 and is now represented by respondent nos. 1 to 3

2. The case of the applicant is that the disputes and differences have arisen between the parties in regard to the liability incurred by the partnership firm, which is about 2,25,00,000/-. It is the contention of the applicant that Mr. William Joseph, deceased partner was liable to make payments interalia on account of service tax liability and other amounts as set out in paragraph 5 of the memo of application. Accordingly, a notice dated 16 January, 2020 was addressed to the

respondents, being the legal representatives of the deceased partner, setting out the nature of the disputes and requesting that the disputes be referred to arbitration by appointing an arbitral tribunal.

3. Learned counsel for the applicant has drawn the Court's attention to the arbitration agreement as contained in the Deed of Partnership, being Clause 18, to contend that there exists an arbitration agreement between the parties and considering the nature of the said clause, the applicant would have right to invoke arbitration even against the legal representatives of the deceased partner, namely, the respondents. Clause 18 reads thus:

"18. All disputes and questions whatsoever which shall arise during the continuance of the partnership or thereafter between the partners or their respective legal representatives or partner and the legal representatives of the other concerning this Indenture or the construction or application of any clause or thing therein contained or of any account or valuation or division of assets, debts or liabilities to be made hereunder or as to in any matter relating to the partnership or the rights, duties or liabilities shall be referred to for arbitration in accordance with the provisions of the Indian Arbitration Act, 1940 or any other statutory modification or substitution thereof for the time being in force."

4. Learned counsel for the respondent would not dispute the existence of an arbitration agreement. His only contention that it may not be possible for the respondent to bear the financial expenditure of the arbitral proceedings and hence a reference to arbitration ought out to be made.

5. Having heard learned counsel for the parties, it appears that there is no dispute in regard to the arbitration agreement and as clearly seen from the opening paragraph of the Deed of Partnership, which describes the partner to mean and include their respective heirs, executors, administrators and assigns and also Clause 18 which also includes legal representatives of the partners. Hence, it would be required to be held that the present application as filed against the respondents seeking reference of disputes to arbitration would be maintainable. This also in view of the clear provisions of Section 40 of the Arbitration and Conciliation Act, which provides that the arbitration agreement shall not be discharged by death of party and shall in such event be enforceable by or against the legal representatives of the deceased. Also there is a proper invocation of the arbitration agreement in a manner known to law. As the respondents did not agree to appoint an arbitral tribunal, the present application was required to be filed by the applicants.

6. I have considered the contentions as urged on behalf of the respondents. The arbitration agreement and its invocation is not disputed. The contention that the respondent may not be in sound financial position to bear the expenses of an arbitration cannot be a ground to hold that the present application is not maintainable. All these are issues which are clearly taken care of by various provisions under the

Arbitration and Conciliation Act and are required to be considered by the arbitral tribunal.

7. In the aforesaid circumstances, in my opinion, the application is required to be allowed as all the essential requirements for this Court to exercise jurisdiction under section 11 are eminently present. The application is accordingly allowed by the following order:

ORDER

- (i) Mr. Anil Mehta, Advocate is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Deed of Partnership dated 12 February, 2002.
- (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 by email id-rgpsm-bhc@nic.in, 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 10 days from today on a date which may be mutually 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) All contentions of the parties are expressly kept open;
- (vi) The application 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:

Mr. Anil Mehta, Advocate of this Court,
Prakash Chamber, Chamber No.1, 1st Floor,
77, Nagindas Master Road, Fort, Mumbai – 400 023.
Contact No. 9820166852 / 022-66353112.
Email : mehtaneil95@gmail.com

[G.S. KULKARNI, J.]