

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMM. ARBITRATION APPLICATION NO.74 OF 2021

Rudresh Krishnachandra Jhunjhunwala & Ors.

...Applicants

Versus

Radha Kishorechandra Jhunjhunwala & Anr.

...Respondents

...

Mr.S.P.Kanuga, for the Applicants.

Mr. B.R.Dalal, for Respondent No.1.

Mr.Pradhuman Chauhan, for Respondent No.2.

...

CORAM : G. S. KULKARNI, J

DATE : 8 MARCH 2022

P. C.

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") whereby the applicants have prayed for appointment of an arbitral tribunal for adjudication of the disputes and differences which have arisen between the parties under the deed of partnership dated 24 March 1971 read with the deed of indenture dated 7 April 1994. The arbitration agreement under the partnership deed dated 24 March 1971 is contained in Clause 19. It is the case of the applicants that the deed of indenture dated 7 April 1994 is in continuation of the original partnership deed dated 24 March 1971. As the disputes and differences have arisen between the parties, the applicants by their Advocate's letter dated 26 November 2020 called upon the respondents to refer the disputes to arbitration. As the notice invoking the arbitration clause was not responded by the respondents, the present application has been filed.

2. The respondents have appeared. Mr.Dalal, learned Counsel for the respondents submits that his clients are inclined to settle the disputes with the applicants. Mr.Kanuga, learned Counsel for the applicants would state that his clients are not averse to any settlement talks as intended by the respondents. He, however, submits that any desire to settle ought to be genuine. He submits that his clients have serious apprehension as to whether there is any genuine desire of the respondents to settle the disputes. Mr.Dalal would however submit that the parties nevertheless hold talks and make an attempt to bring out an amicable resolution of the disputes. He, however, submits that certain time limit be made available to the parties to undertake the settlement talks. Mr.Dalal, on instructions, would submit that in the event the settlement talks fail, certainly the parties can appear before the arbitral tribunal and the disputes can be adjudicated. Mr.Dalal would submit that there are certain other properties and the disputes in that regard can also be referred to arbitration.

3. In view of the consensus between the parties, the application can be disposed of by appointing an arbitral tribunal, however, keeping some time period, for the parties to work out any settlement, if it is so possible. The application is accordingly, disposed of by passing the following order:-

ORDER

(i) Mr. Justice Sunil P. Deshmukh, former Judge of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the deed of partnership dated 24 March 1971 read with the deed of indenture dated 7 April 1994;

(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 Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

(iv) At the first instance, the parties shall appear before the prospective arbitrator after 30 days from today on a date which may be mutually fixed by the prospective sole arbitrator. In the meantime, it is open to the parties to enter the settlement talks and making an endeavour to settle the disputes. All contentions of the parties in that regard are expressly kept open.

(v) In the event the settlement failed and is not brought about within 30 days, the parties are directed to appear before the arbitral tribunal within a period of 10 days after 30 days period is over;

(vi) A statement of claim be accordingly placed before the arbitral tribunal within a period of three weeks from the parties appearing before the arbitral tribunal on the first occasion.

(vii) In the event the respondents intend to assert their rights, it shall be permissible for the respondents to file their counterclaim.

(viii) Both the parties are also at liberty to file interim applications as permissible in law and as facts and circumstances of the case may permit them. All contentions of the parties in that regard are expressly kept open.

- (ix) The application is disposed of in the above terms. No costs.
- (x) Office to forward a copy of this order to the learned Arbitrator on the following address:

“Address: 701, Oval House,
British Hotel Lane,
Off Nagindas Master Road,
Fort, Mumbai.

Contact No. 9545028282
Email ID – sunilpdeshmukh@gmail.com”.

(G. S. KULKARNI,J.)