

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.124 OF 2018

Chanda Kirti Somaiya

... Applicant

VS.

Rajesh Shamji Somaiya

... Respondent

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RAJESH
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Ms.Sonali Jain for the Applicant.

Mr.Paras Vira for the Respondent.

CORAM : A. K. MENON, J.

DATED : 7th MARCH, 2022.

P.C. :

1. By this application under section 11 the applicant seeks appointment of a Sole Arbitrator in terms of an agreement in writing, copy of which is annexed at Exhibit A. Disputes having arisen between the parties the applicant has invoked arbitration with a letter dated 13th July, 2017, copy of which is at Exhibit F. Having nominated a sole Arbitrator, there is no response to the said notice.

2. This matter was heard on 24th August, 2018, when this court passed the following order-

“1. The learned Advocate for the Respondent has raised three objections namely that the document is not properly stamped; that the claim is barred by the law of limitation and the dispute is not arbitrable in view of Section 11(6) of the amended Act. The issue of limitation as well as the issue as to

whether the dispute is arbitrable, shall be decided by the learned Arbitrator. In so far as the issue of stamping is concerned, the learned Advocate for the Respondent has submitted that he has no objection if the Partnership Deed 25th July, 2005 is impounded and sent for adjudication. Both the parties have not disputed the existence of the Partnership Deed, a copy of which is annexed to as Exhibit A to the Application though the original is not available. In view thereof, a copy of the Partnership Deed dated 25th July, 2005 shall be forwarded by the Prothonotary and Senior Master to the concerned Collector of Stamps, who shall adjudicate the same and submit his report to this Court on or before 25-10-2018. Stand over to 25-10-2018.” (Emphasis supplied)

3. It is evident from the above that the existence of the partnership deed is not in dispute, so also the existence of the arbitration clause embodied in the partnership deed is not in dispute. All other defences on merit may be taken up before the Sole Arbitrator. The only aspect that remains that the issue of insufficient stamping of the agreement. That issue has now been addressed by the virtue of the decision of the Supreme Court in *InterContinental Hotels Group (India) Pvt. Ltd. & Anr. Vs. Waterline Hotels Pvt. Ltd.*¹. I have also taken a view on this aspect in Commercial Arbitration Application No.124 of 2018 by my order dated 28th February, 2022.

4. In my view the facts of the present case would clearly indicates that a Sole Arbitrator to be appointed since insufficiency of the stamps alone ought not to hold up the process pre-appointment. In that view of the matter, I

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pass the following order-

- (i) Mr.Yashodeep Deshmukh, Advocate is appointed as Sole Arbitrator to adjudicate upon claims and counter claims, if any.
- (ii) The learned Arbitrator is requested to file his disclosure statement under section 11(8) and Section 12(1) within four weeks with the Prothonotary and Senior Master and provide copies to the parties.
- (iii) Parties to appear before the Sole Arbitrator on a date to be fixed by him at his earliest convenience.
- (iv) Fees payable to the Sole Arbitrator will be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018.
- (v) Application is disposed in the above terms.
- (vi) In view of the disposal of the application, interim application, if any, is also disposed.

(A.K. MENON, J.)