

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.97 OF 2022

Satish Tukaram Kale	]	..	Applicant
vs.			
Vijaya Associates & Ors.	]	..	Respondents

Mr.Rakesh Singh, for the Applicant.

Mr.Aditya Mandavkar i/b Corps Legal for the Respondents.

CORAM : BHARATI DANGRE, J

DATE : 16th DECEMBER, 2022.

P.C.

1] An indenture of admission of a new partner to the Partnership Deed dated 05.03.2015, comprise of a dispute resolution mechanism in form of clause 9, where it is agreed as under :

“ix. All claims whether settled or not, disputes and differences which may arise among the parties hereto or their legal representatives touching these presents or the Partnership on dissolution or winding up and final accounts thereof or any other matters or things whatsoever among the partners relating to the Partnership or Partnership business shall be determined by the Arbitration in Mumbai or at any other place mutually agreed by and between the partners in accordance with the law of Arbitration in force for the time being with each party appointing his own arbitrator(s).”

2] Since the dispute arise out of the Partnership Deed, the Applicant invoked the arbitration on 17.11.2022 by taking recourse to clause

17(ix) as well as clause 17(xiv) and even suggested the name of the Arbitrator to the Respondent. There was no response from the Respondent, which has constrained the Applicant to approach this Court seeking appointment of a Sole Arbitrator, in exercise of powers under Sub-section (6) of Section 11 of the Arbitration and Conciliation Act, 1996, to resolve the dispute arising out of the Partnership Deed dated 05.03.2015.

3] The learned counsel for the Respondent do not dispute existence of the Arbitration clause and would submit that if the Sole Arbitrator is appointed by this Court, the Respondent shall submit himself to the jurisdiction of the Arbitrator who shall conduct the proceedings in accordance with Arbitration Act.

4] In the wake of aforesaid statement, I deem it expedient to pass the following order :

ORDER

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Advocate Karan Bhosale, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : 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.

(d) Appearance before the Arbitrator : 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 in the week commencing from 02/01/2023. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication information of the parties : 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.

(f) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) Fees : The Sole Arbitrator shall be entitled for the fees as per the 4th Schedule of the Arbitration and Conciliation Act,

1996 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All rights and contentions of the parties are kept open.

Application is disposed off in the aforesaid terms.

[BHARATI DANGRE, J]