

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

ARBITRATION APPLICATION NO. 87 OF 2021

Shri. Ratan D. Patel

..Applicant

Vs.

Shri. Urvax K. Dhanda

..Respondent

Mr.Prerak Choudhary with Ms.Anisha Balse, for the Applicant.

Ms.Shradha Achliya, Ms.Sanaya Kapadia i/b. S.V.Kapadia, for
Respondent.

CORAM : G.S. KULKARNI, J.

DATE : JUNE 20, 2022.

P.C.:

1. Heard learned counsel for the parties on this application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”). Disputes between the parties have arisen under a Partnership Deed dated 19 August, 2015. There is no dispute in regard to the arbitration agreement as contained in clauses 22 and 27 of the said deed of partnership.

2. Learned counsel for the respondent states that the respondent would not dispute the existence of the arbitration agreement. She also states that the respondent would not dispute the invocation of the arbitration agreement which is by the applicant notice dated 18 March, 2020. Her only contention is that there are claims which are totally untenable and hence an opportunity needs to be granted to the respondent to place a reply affidavit on record. However, while so contending, she would agree to the well settled legal position that to examine the merits of the dispute is not the jurisdiction of this Court under Section 11 of the Act considering the well settled position in law.

Duro Felguera, S.A. v. Gangavaram Port Ltd.¹ and **Mayavati Trading Pvt. Ltd vs Pradyut Deb Burman**², Thus in my opinion, as there is no dispute in regard to the existence of the arbitration agreement and its invocation, the disputes are required to be now referred for adjudication, by appointing an arbitral tribunal, however keeping open all contentions of the parties, including the contentions as raised on behalf of the respondent in regard to some of the claims being not tenable and the right of the respondent to raise objections on these issues as may be permissible in law.

3. Learned counsel for the respondent has also stated that her client intends to make an attempt to settle the disputes with the applicant. Learned counsel for the applicant stated that almost for three years the settlement talks were going on between the parties, however without any success. Be that as it may, there is no harm in the parties again making an attempt to resolve the disputes, as now there is some change in the situation in as much as either the parties have an amicable resolution of the disputes or arbitrate on the disputes. It would be thus in the interest of justice that a period of four weeks is granted to the parties to enter into a dialogue on settlement so as to put an end to the disputes. In the event the disputes are not amicably settled within a period of four weeks as available to the parties, in that event, after the expiry of such period the arbitral tribunal can enter reference.

4. In view of the above discussion, the application is required to be disposed of by the following order:-

ORDER

(i) Ms. Naira Jeejeebhoy, Advocate of this Court, is appointed as a

1 (2017)9 SCC 729

2 2019 SCC OnLine Cal 334

sole Arbitrator to arbitrate the disputes and differences between the parties under the Partnership Deed dated 19 August, 2015;

(ii) The learned prospective sole arbitrator shall enter reference after the period of four weeks from today to permit the parties to make an attempt to resolve the disputes amicably.

(ii) The learned prospective sole arbitrator, before entering the 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) The Arbitral Tribunal shall enter reference after a period of 4 weeks from today. In the event of the dispute being not settled, they shall appear before the learned Prospective Arbitrator on the date as may be mutually fixed.

(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:

“Address: C/o. Bharat Flooring & Tiles, 32, Mumbai Samachar Marg, Fort, Mumbai.

Contact No. 9821048890. ”

[G.S. KULKARNI, J.]