Vidya Amin

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

ARBITRATION APPLICATION NO. 69 OF 2021

S.J. Studio and Entertainment Ltd. .. Applicant
Vs.
Bindu and SJ Studio LLP & Ors. .. Respondents

Ms. Shivani Soni i/b. Ms. Kavita Nadar for the applicant.

CORAM : G.S. KULKARNI, J.
DATE : JUNE 27, 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 applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties, which have arisen under an Agreement of LLP dated 7 January, 2016 (Exhibit A). The arbitration agreement between the parties is contained in Clause 34 of the Agreement, which reads thus:

> "34. (a) All the matters not expressly provided in this agreement shall be decided by the consent of all the Designated Partners in writing. Notwithstanding anything to the contrary all disputes and differences including questions about and in connection with the LLP under this Agreement arising between the Designated Partners or between any one of them and the legal representative of the Designated Partners or with the LLP at any time and from time to time, shall be settled by means of arbitration as provided under the Arbitration and Conciliation Act, 1996 as if the parties to the dispute have consented in writing for determination of the same as aforesaid and the provisions of the said Act apply accordingly. The parties agrees for adjudication of dispute and differences by a sole arbitrator. The parties further agrees that the arbitration proceedings shall be conducted in English language and shall be subject to the jurisdiction of Courts at Mumbai. The decision of arbitrator shall be final and binding on the parties.

(b) If any question arises whether the dispute relates to formation, management or business of the LLP, the question shall be referred to the arbitrator, whose decision thereon shall be final."

2. It is the case of the applicant that it had made substantial investments in the business undertaken by the LLP. However, insofar as the respondents are concerned, it is the applicant's case that its claims and contentions are of the nature as set out in the invocation notice dated 7 September, 2020, the relevant extract of which reads thus:

"(a) To dissolve the said LLP, i.e., Limited Liability Partnership Agreement executed between our client and Noticee no. 1 and Noticee no. 2.

(b) Proper accounting of the said LLP and after that giving the share of our client to our client.

(c) To repay the sum of money being Rs.10,15,018.00 as mentioned in paragraph no. 7 herein above along with an interest @ 18% per annum from 13 February, 2020 till the date of actual payment.

(d) To repay the 1/3rd share of our client of the total money taken by you Noticees from the said LLP and as detailed in para 6 above being an amount totaling to Rs.5,08,51,884.00 and accordingly our client being entitled for 1/3rd share being Rs.1,69,50,628.00 along with an interest @ 18% per annum from 13 February, 2020 till the date of actual payment.

3. In the above circumstances, the applicant by such notice of its advocate dated 7 September, 2020 has invoked the arbitration agreement setting out the nature of the claim. The respondents were called upon to refer the disputes and differences for adjudication of an arbitral tribunal. The applicant also suggested the names of the proposed arbitrators as set out in paragraph 15 of the invocation notice. The invocation notice was replied by the respondents' advocate's letter dated 25 November, 2020 addressed to the advocate for the applicant, whereby the respondents inter alia denied the claim as made by the applicant. However, in paragraph 14 of the said letter, the respondents did not agree to the name of the proposed arbitrator as suggested by the applicant and in turn, proposed the name of another advocate who could be appointed as an arbitrator. It was also stated that the respondents were invoking the arbitration clause by suggesting the name of the proposed arbitrator, so as to refer the disputes to arbitration.

4. As there was no consensus between the parties on the name of the arbitrator to be appointed, the present application was filed on 10 December, 2020.

5. It is quite clear that there is no dispute on the existence of the Arbitration agreement between the parties. In fact both the parties have invoked the arbitration agreement and have intended to refer the disputes to an arbitral tribunal. In the above circumstances, the requirements for this Court to exercise jurisdiction under section 11(6) of the Act are eminently present. The application is accordingly required to be allowed. It is allowed by the following order:

<u>ORDER</u>

(i) Mr. Justice P.D. Kode, Former Judge of this Court is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Agreement of LLP dated 7 January, 2016 (Exhibit A)

(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, 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.

(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.Justice P.D. Kode (Retd.)
204, 2nd Floor, Vardhaman Chambers,
Cawasjee Patel Street,
Lane adjacent to Dwarka Hotel,
Fort, Mumbai – 400 0001.
Contact No. 9969101100

[G.S. KULKARNI, J.]