

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

COMMERCIAL ARBITRATION APPLICATION NO.465 OF 2019

Siemens Financial Services Private Limited .. Applicant

v/s.

Vishnoo Mittal & Ors. .. Respondents

Adv. Aaushi Doshi a/w Siddhesh Rajput i/b. India Law LLP for the applicant.

None for the respondents.

CORAM : A. K. MENON, J.

DATED : 2ND MAY, 2022.

P.C. :

1. By this application, the applicant seeks appointment of a Sole Arbitrator under an Agreement of Guarantee as between the applicant and 8 respondents. Copy of the Agreement is at Annexure 'C'. Clause no.11 of that Agreement reads as follows;

*“11. Arbitration : Any and all disputes
("Dispute") arising out of or in connection
with this Agreement and the Schedule (s)
attached hereto or the performance of this
Agreement shall be settled by arbitration*

and the award thereupon shall be binding upon the parties to this Agreement. The place of arbitration shall be Mumbai, in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof.”

2. The learned counsel for the applicant submits that the cause title of the applicant contains an incorrect description of the Agreement as “Finance Agreement” but what is sought to be invoked is the arbitration clause under the Guarantee Agreement and an arbitrator was sought to be nominated. She has invited my attention to the notice invoking arbitration dated 13th August, 2019, copy of which is at Exhibit ‘G’ is evident from paragraphs 9 and 10 that the applicant seeks appointment of a Sole Arbitrator. The application was initially sought to be served personally, however, it appears that the applicants are unaware of the whereabouts of some of the respondents.

3. Order dated 5th November, 2019 records that respondent nos.1, 3, 4 and 8 were served as per the affidavit of service dated 4th November, 2019. The remaining respondents were unserved. On 24th January, 2022 leave was granted to serve the respondents by alternate modes of service including by email. On 14th February,

2022, the counsel for the applicant informed the court that he was unable to serve the unserved respondents personally and that he proposes to apply for leave to serve by substituted service. Leave was granted to serve by substituted service. On 14th March, 2022 since the Court found justifiable reasons for allowing that application, IA was allowed permitting substituted service of the notice of this application.

4. The learned counsel for the applicant states that service as contemplated has been effected and that an affidavit of service dated 30th April, 2022 has been lodged in the registry. However, the same is not available in the Record and proceedings. He undertakes to ensure that the affidavits in the original will be placed on record by 5th May, 2022. She has undertaken to file a copy of affidavit which includes Annexure 'B' which is a relevant page of the newspaper setting out that the application will be taken up today. The returnable date is 2nd May, 2022. Respondents are absent on call. There is no reason to keep this application now pending.

5. In view thereof, I pass the following order;
 - (i) Application is allowed.

- (ii) Mr. Hormaz Daruwalla, Advocate, is appointed as Sole Arbitrator to adjudicate upon the disputes between the parties.
- (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 Arbitrators) Rules, 2018.
- (v) Arbitration Application is disposed in the above terms subject to undertaking to comply as aforesaid.
- (vi) No costs.
- (vii) Orders shall be uploaded only after the original affidavit to be filed in the registry.

(A. K. MENON, J.)