

Vidya Amin

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

COMMERCIAL ARBITRATION APPLICATION NO. 249 OF 2021

JSW Steel Ltd. .. Applicant
Vs.
Delta Iron & Steel Co. Pvt. Ltd. & Ors. .. Respondents

Ms. Zahra Padamsee i/b. Vashi and Vashi for the applicant.

CORAM : G.S. KULKARNI, J.
DATE : JUNE 8, 2022.

P.C.:

1. This is an application filed under section 11 of the Arbitration and Conciliation Act (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 the Franchisee Agreement dated 1 July, 2018. The Agreement is annexed at Exhibit “A” to the present application. The agreement is between the applicant and respondent no. 1 and its two sister concerns – respondent nos. 2 and 3. The arbitration agreement is contained in Clause 7.2 of the Agreement in question, which reads thus:

“7.2 Arbitration

7.2.1 In case of any dispute or difference arising between the parties as to the interpretation of this agreement or as to any rights or obligations arising out of in connection with, or relating to this agreement which cannot be resolved through mutual negotiations shall be referred to an arbitrator to be nominated by the Joint Managing Director of the Franchisor for adjudication. The proceedings before the arbitrator would be governed by the Arbitration and Conciliation Act, 1996. The Arbitration proceedings shall be conducted in the English language. The venue of arbitration shall be Mumbai and the Courts in Mumbai shall have exclusive jurisdiction for interim measures under the Arbitration and Conciliation Act, 1996.”

2. It is the case of the applicant that as set out in the invocation notice dated 22 November, 2019 read with notice dated 1 September, 2021 that the applicant had called upon the respondents to appoint an arbitral tribunal for adjudication of the disputes and differences which have arisen between the parties in regard to the non-payment of outstanding principal amount of 20,39,90,685/- which has arisen under the Franchisee Agreement in question, However, there was no response on the part of the respondents nor any inclination to appoint an arbitral tribunal. Hence, the present application was filed by the applicant.

3. As the respondents were yet to be represented, on 14 February, 2022, the following order was passed:

“1. Issue notice to the respondents, returnable on 28 February, 2022. In addition to the Court notice, learned advocate for the applicant is permitted to serve the respondents by all permissible modes and place on record an affidavit of service before the returnable date. Hamdast is permitted.

2. In the event, if despite service of notice the respondents are not represented on the adjourned date of hearing, the Court shall proceed to hear the applicant and pass appropriate orders.”

4. In pursuance of such order, an affidavit of service of Mr. Bharat Dhumak dated 25 February, 2022 is placed on record wherein the deponent has stated that a copy of the proceedings was forwarded via Blue Dart to respondent nos. 1, 2 and 3 on 17 February, 2022 and when the delivery was attempted qua respondent nos. 1 and 3, the parcel was returned with remarks “premises closed”. As far as respondent no. 2 was concerned, the service packet was accepted. Hence, respondent no. 2

was served. There is a further affidavit of service of Mr. Pranay Pawar who has stated that deponent visited the address of respondent nos. 1 and 3 to deliver the documents when the service of the proceedings was accepted. A true copy of the acknowledged letter dated 16 February, 2022 is placed on record as Annexure-A to the said affidavit. It is, therefore, quite clear the respondents are served, however, they are not represented. It appears that the respondents are not interested to contest the present proceedings.

5. As there is no affidavit in opposition, it would be required to be taken that the contentions as urged by the applicant in the memo of application stand uncontroverted.

6. Having perused the record, it appears that there is an arbitration agreement between the parties. There is also a lawful invocation of the arbitration agreement by the applicant's notice as noted above. The respondent has not agreed to appoint an arbitral tribunal. Thus, all the essential requirements for this Court to exercise jurisdiction under Section 11 are eminently present.

7. In the aforesaid circumstances, in my opinion, the application is required to be allowed. The application is accordingly allowed by the following order:

ORDER

(i) Mr. Justice Dilip Bhosale, Former Chief Justice of the

Allahabad High Court is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Franchisee Agreement dated 1 July, 2018.

(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 by email id – rgpsm-bhc@nic.in, 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) All contentions of the parties are expressly kept open;

(v) The application is disposed of in the above terms. No costs.

(vi) Office to forward a copy of this order to the learned Arbitrator on the following address:

Mr. Justice Dilip B. Bhosale,
Former Chief Justice of Allahabad High Court,
6, Bhagyodaya Building,
79, Nagindas Master Road,
Fort, Mumbai – 400 001.
Tel. Nos. 022-22675858/59
Mob. No. 9494940122/9833300555

[G.S. KULKARNI, J.]