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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.293 OF 2021

VFS Global Services Pvt. Ltd. ..Applicant
Vs.
Manjit Dhody & Ors. ..Respondents

AND

ARBITRATION APPLICATION NO.1 OF 2022

VFS Global Services Pvt. Ltd. ..Applicant
Vs.
Beautex & Ors. ..Respondents

Ms.Jacinta D'Silva i/b. Mr.Vinay S. Bandiwadekar, for the Applicant.

Ms.Alisha Ningoo i/b. M.M.Legal Associates, for the Respondents.

CORAM : G.S. KULKARNI, J.
DATE : FEBRUARY 22, 2022.

PC.:

1. These are the applications filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") whereby the applicant seeks appointment of an arbitral tribunal. It is the case of the applicant that disputes and differences have arisen between the parties under the leave and licence agreements dated 13 February 2008 and 3 February 2011, details of which are set out in each of these applications. There is no dispute in regard to the existence of the arbitration agreement between the parties. The applicant had called upon the respondents to refer the disputes and differences in regard to the claim of the applicant, for arbitration of a sole arbitrator. As the said request was not accepted, the present applications are filed.

2. After these applications were heard for sometime, learned Counsel for the respondents would fairly submit that her clients would not have any objection for the disputes and differences to be referred for arbitration of a sole arbitrator, however, subject to the objection of the respondents on limitation, as the case of the respondents is to the effect that the applicant's claim is time barred. Certainly, it is permissible for the respondents to raise such contention before the arbitral tribunal and which can be decided by the arbitral tribunal even as a preliminary issue.

3. In the above circumstances, as the disputes and difference between the parties under the leave and licence agreement(s) pertain to the refund of security deposit amounts, it would be within the parameters of the jurisdiction of this Court under Section 11 to refer the disputes for adjudication by an arbitral tribunal. Both these proceedings are disposed of by the following order:-

ORDER

(i) Ms.Dipti Panda, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the leave and licence agreements dated 13 February 2008 and 3 February 2011;

(ii) The learned sole prospective arbitrator, fifteen 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 these applications 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 prospective sole arbitrator;

(iv) All contentions of the respondents on the claim of the applicant being time barred, is expressly kept open with liberty to the respondents to raise such contention by an appropriate application before the arbitral tribunal. All contentions of the applicant in that regard are also expressly kept open. Even otherwise all contentions of the parties on merits of the matter are expressly kept open;

(v) The fees payable to the arbitral tribunal shall be the fees as prescribed under the Bombay High Court (Fees payable to arbitrators) Rules, 2018;

(vi) The fees of the arbitral tribunal shall be shared by the parties in equal proportion;

(vii) The applications are disposed of in the above terms. No costs.

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

Ms. Dipti Panda, Advocate.
Add: 123, 3rd Floor,
24-B, Rajabhadur Mansion,
Ambalal Doshi Marg,
Fort, Mumbai – 400 001.
Ph. 022 - 49721742

[G.S. KULKARNI, J.]