

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION [ARB] NO. 662/2021.

M/s. Sterling Agency through its Proprietor.

-VERSUS-

Life Ezee Sai Ventures Pvt. Ltd. And others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri M.R. Johrapurkar, Advocate for the Applicant.
None for Non-applicants/served.

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CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 07, 2022.

Heard the learned Counsel for the Applicant.

2. This is an application filed under Section 11[6] of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Arbitration Act" for short) for appointment of an Arbitrator. Initially notices were issued to non-applicants, and repeated efforts have been made to personally serve them, but, it failed. On request made by the applicant, non-applicants were permitted to be served through substitute service by paper publication. The applicant has also served

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non-applicants through e-mail, still there is no response. It appears that despite service, they have chosen not to appear in the matter.

3. The non-applicant, a Private Limited Company has entered into 'C and F Agreement' with the applicant on 18.10.2019. The applicant/Company was engaged in marketing, sale and distribution of Car wash items in the brand name of "Wash My Car", and has appointed non-applicants as carrying and forwarding agent. By virtue of said agreement, in terms of various clauses of the agreement, the applicant has deposited an amount of Rs.7.75 lakhs and also complied with rest of the conditions.

4. In the application, it is submitted by the applicant that in pursuance of the agreement, it has obtained necessary licence, however there is no response from non-applicants. It appears that there has been a dispute on account of non-compliance of the terms and conditions. The applicant has produced copy of agreement dated 18.10.2019, which bears a specific clause no.41 for the resolution of the dispute by arbitration at Nagpur. Parties have decided to resolve the dispute by appointing a sole Arbitrator, who shall be

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appointed by the non-applicant – Company. There is no dispute that the applicant has initially issued notice dated 15.02.2001 to non-applicants to figure out the dispute and seeking necessary compliance. The said notice was received, however, non-applicants did not acted accordingly. Having no other alternative, the applicant has issued a statutory notice dated 13.09.2021, by which it has invoked the arbitration clause no.41 of the agreement.

5. The applicant has principally asked the non-applicants to appoint an arbitrator and in case of their failure, the applicant would be taking appropriate steps. Acknowledgment is produced to show that the notice is duly served. The contention of applicant had gone unchallenged.

6. In substance there has been an arbitration clause and therefore, this is a fit case to appoint an Arbitrator. Having regard to the nature of dispute, Shri M.P. Kukday, retired District and Sessions Judge, has been appointed as a Sole Arbitrator in the matter.

7. Non-applicants are at liberty to raise all objections before the learned Arbitrator.

8. Registry is directed to request the learned

Arbitrator for consent letter and for disclosure statement as per the provisions of the Arbitration Act.

JUDGE