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IN THE HIGH COURT OF BOMBAY AT GOA
APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO. 22 OF 2022

MADGAVKAR SALVAGE THR.
PARTNER ANIL V. MADGAVKAR ... APPLICANT
VS
MARINE LOGISTICS MUMBAI
REP. BY PARTNERS ROHINTON
K. PATEL ... RESPONDENT

Mr. Ashwin D. Bhobe with Ms. S. Shaikh, Advocates for the Applicant.

Mr. Bhargav Khandeparkar, Advocate for the Respondent.

CORAM: B.P. COLABAWALLA, J.

DATED: 3 JANUARY 2023

P.C.

1. The above Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) seeking the constitution of the Arbitral Tribunal to decide the disputes and differences arising out of the Time Charter Agreement dated 28 January 2019.

2. Both the parties before me agree that there is a valid arbitration clause between the parties as reflected in clause 8 of the Time Charter Agreement and neither party is disputing the validity of said clause 8, which reads thus:-

“8. Disputes: In case of any dispute whatsoever, the matter shall be resolved by discussions, failing which if the dispute remains unresolved for a period of 30 days, the dispute is to be referred to Arbitration to a Sole Arbitrator or failing agreement on the Sole Arbitrator, to a Tribunal of three Arbitrators, the Owners nominating their Arbitrator and the Charterer nominating their Arbitrator and the two Arbitrators so appointed, to jointly appoint the Presiding Arbitrator. The place of the Arbitration shall be Goa. The Arbitration shall be conducted in accordance with the Arbitration and Conciliation Act 1996 (as amended). The jurisdiction for any legal matters shall be the Courts at Panaji, Goa only.”

3. It is further stated before me that even though the arbitration clause contemplates that on failure to agree to a Sole Arbitrator, the Arbitral Tribunal shall comprise of a Three Member Tribunal, the parties have decided and agreed that the Arbitral Tribunal shall be constituted by a Sole Arbitrator. The parties have further agreed that Mr. Justice N.A. Britto, a Former Judge of this Court, be appointed as the Sole Arbitrator to adjudicate the disputes and differences between the parties under the Time Charter Agreement dated 28 January 2019.

4. In these circumstances, the following order is passed :-

- (a) Justice N.A. Britto, a Former Judge of this Court, is appointed as the Sole Arbitrator to decide upon the disputes and differences between the Applicant and the Respondent arising out of and/or in connection with and/or in relation to the Time Charter Agreement dated 28 January 2019. The parties have agreed that even the counterclaim of the Respondent, if any, arising out of and/or in connection and/or in relation to the Time Charter Agreement shall be decided by the said Sole Arbitrator.
- (b) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocate for the Applicant within a period of one week from today.
- (c) The learned Sole Arbitrator is requested to forward his Statement of Disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Advocate for the Applicant so as to enable him to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent.
- (d) The parties shall appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with

regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

- (e) Contact and communication particulars shall be provided by both sides to the learned Sole Arbitrator within a period of one week from today. This information shall include a valid and functional email address as well as the mobile numbers of the respective Advocates.
- (f) The parties have agreed that the Sole Arbitrator shall charge his fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee payable to Arbitrators) Rules, 2018. The parties have further agreed that all the arbitral costs and the fees of the Arbitrator will be borne by the Applicant and the Respondent equally and will be subject to the final Award that may be passed by the Tribunal.
- (g) The parties immediately consent to a further extension of six months to complete the arbitration, should the learned Sole Arbitrator find it necessary.
- (h) The parties have agreed that the venue and seat of the arbitration will be in Panaji, Goa.

5. The Application is disposed of in the aforesaid terms. However, there shall be no order as to costs.

6. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

B.P. COLABAWALLA, J.

VAIGANKAR
ESHA SAINATH

Digitally signed by VAIGANKAR
ESHA SAINATH
Date: 2023.01.04 18:31:24 +05'30'