

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 5 OF 2022**

Kohinoor Infra-Development and others ... Petitioners

vs.

Madhu K. Achhra, HUF

Through Karta: Madhu Kachharam Achhra and others ... Respondents

Mr. Ajit A. Kocharekar for petitioners.

Mr. Gul K. Achhra for respondents.

CORAM : MANISH PITALE, J

DATE : 17th MARCH, 2023

P.C. :

. By this petition, filed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioners have prayed for appointment of an arbitrator for resolution of disputes between the parties.

2. It is undisputed that an arbitration proceeding was undertaken earlier, but due to the unfortunate demise of the sole arbitrator, the proceedings could not be continued.

3. In that light, on 19th March, 2022, the petitioners issued notice to the respondents, invoking the arbitration clause and suggesting name of a sole arbitrator. The said notice was not claimed and as a consequence, the agreed procedure for appointment of arbitrator did not result in appointment of sole arbitrator.

4. Learned counsel for the petitioners invited attention of this Court to the two development agreements in which, identical arbitration clauses are

found. It is submitted that the disputes arose between the parties and therefore, recourse to arbitration became necessary. It is in this backdrop that the petitioner filed the present petition, seeking appointment of sole arbitrator.

5. Learned counsel for the respondents raised objections to the prayers made in the present petition, firstly on the ground that the petition was hit by Section 19(2) of the Partnership Act, 1932. Secondly, it was also hit by Section 69(2) of the said Act, since the petitioner-partnership firm was allegedly not registered and thirdly, it was alleged that certain proceedings of the earlier arbitration, conducted before the sole arbitrator, were not genuine and that copies of such proceedings have been filed with the present petition.

6. Insofar as the first objection raised by the learned counsel of the respondents is concerned, this Court finds that the present petition is filed by the partnership firm as the first petitioner and all the partners as petitioner Nos. 2 to 6. Hence, there is no substance in the first objection raised on behalf of the respondents.

7. Insofar as the second objection, pertaining to Section 69(2) of the Act is concerned, in the case of ***Umesh Goel v/s. Himachal Pradesh Co-op. Group Housing Society*** [(2016) 11 SCC 313], the Supreme Court has held that mere non-registration of a partnership firm cannot come in the way of arbitration proceedings because arbitrator is not a Court. The said view is followed by this Court in the case of ***Chaudhari Food Industries v/s. Ahmednagar District Goat Rearing*** [2002(2) MhLJ 117]. Therefore, there is no substance in the said objection too.

8. Insofar as the third objection is concerned, this Court is unable to understand as to how the genuineness or otherwise of copies of proceedings pertaining to earlier arbitration proceeding, can come in the way of this Court considering the prayer for appointment of arbitrator, made by the petitioner in the present petition.

9. Insofar as the present petition is concerned, this Court finds that there are indeed arbitration clauses in the two development agreements. Disputes have arisen between the parties and the petitioner sent notice dated 19th March, 2022, which did not lead to appointment of arbitrator, as per the agreed procedure. Therefore, the present petition is found to be maintainable. In the light of the facts noted hereinabove, the same deserves to be granted.

10. This Court is informed that the parties are from Ulhasnagar and Ambarnath. Hence, an advocate available at Thane can be appointed as the neutral sole arbitrator.

11. Accordingly, Ms. Rupali S. Akolkar, Advocate, available at Thane, is appointed as sole arbitrator for resolution of dispute between the parties. Details of the learned sole arbitrator are as follows:

B-1407, Lotus Gawand Baug,
Near Upvan Lake, Pokhran Road No.2,
Thane (West)
Mob. No.: 98924 95581
Email: adv.rsakolkar@gmail.com

12. The parties undertake to inform the learned arbitrator immediately about the order passed today.

13. The learned arbitrator is requested to submit her consent and disclosure statement in terms of Sections 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Registrar (Judicial) of this Court. The fees of the learned arbitrator shall be as per the Fourth Schedule to the said Act.

14. All questions are left open for determination by the learned arbitrator.

15. The petition stands disposed of.

(MANISH PITALE, J)

Priya Kambli