

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 167 OF 2023

Mr. Kunal Jachak

...Petitioner

Versus

Mr. Suryanshu Shrirang Shirole & Anr.

...Respondents

Mr. Feroz Patel a/w Vibha Joshi i/by Zunjarrao and Co. for the
Petitioner.

Mr. Purushottam G. Ghavan for the Respondent Nos. 1 and 2.

CORAM : R.I. CHAGLA J

DATE : 10 November 2023

ORDER :

1. By this Arbitration Petition, the Petitioner is seeking appointment of sole Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 for adjudication of disputes between the Applicant and the Respondents with respect to the LLP Agreement dated 8th January 2019.

SHARAYU
PANDURANG
KHOT

Digitally signed
by SHARAYU
PANDURANG
KHOT
Date:
2023.11.24
16:56:15 +0530

2. There is a Dispute Resolution under Clause 23 of the LLP

Agreement dated 8th January 2019 by which parties had agreed that they would resolve the dispute through good faith consultation in accordance with the agreement and if good faith consultation could not result in a resolution of the dispute within sixty days of the consultation having commenced, then the dispute would be referred to arbitration by appointment of sole Arbitrator as per the provisions of Arbitration and Conciliation Act, 1996.

3. The Petitioner had addressed a communication letter through its Advocate dated 21st March 2023 to the Respondents wherein they have invoked Clause 23 of the LLP Agreement and called upon the Respondents to participate in discussion for arriving at a settlement of the dispute under Clause 23(b) of the LLP Agreement. It was made clear that any failure by the Respondents to mutually consent will be of significance under Clause 23 of the LLP Agreement. The said letter dated 21st March 2023 was not responded to by the Respondents.

4. Thereafter, by the Petitioner's Advocate's notice dated 20th April 2023, the Petitioner invoking arbitration under Clause 23(b) read with 23(c) of the Agreement. The Respondents were

called upon by the said notice to consent to the appointment of the sole Arbitrator within 30 days of receipt of the notice.

5. Respondents by their letter dated 3rd May 2023 mentioned that the Petitioner had resigned from the LLP and hence, invoking of arbitration by the Petitioner under the Agreement is not valid.

6. In view thereof, the Petitioner has filed the present Arbitration Petition by placing reliance upon the Arbitration Agreement under Clause 23 of the LLP Agreement. The Petitioner has contended that the Respondents have failed to consent to commence good faith consultation. This is borne out from their not responding to letter dated 21st March 2023 addressed by the Advocates for the Petitioner calling upon the Respondents to participate in amicable settlement of disputes under Clause 23 of the LLP Agreement. The Petitioner was thus, compelled to invoke arbitration through their Advocate's notice dated 20th April 2023.

7. Having considered these facts and there being an Arbitration Agreement, in my view, a case has been made out for

referring the disputes to arbitration. It is necessary to note that the Respondents have in their response to the notice invoking arbitration alleged that the Petitioner has resigned from the LLP Agreement and on account of which the Arbitration Agreement is not valid. In my considered view, this issue can be left to the Arbitrator appointed by this Court to consider, particularly, in view of the Petitioner having disputed his resignation from the LLP

8. In that view of the matter, the relief sought for in the Petition is granted and following order is passed.:-

- (i) Mr. Rajendra B. Agarwal, (retired District Judge, Pune Court) is appointed as a Sole Arbitrator for adjudicating the disputes between the Applicant/Petitioner and the Respondents under Clause 23(d) of the LLP Agreement dated 8th January 2019.
- (ii) The venue of arbitration shall be in Pune.
- (iii) Office to inform the Sole Arbitrator regarding

appointment.

- (iv) The Sole Arbitrator is requested to file the Disclosure Affidavit of Arbitration under Section 11(8)(i) of the Arbitration and Conciliation Act, 1996 within a period of three weeks from the date of receipt of the notice issued by the Registrar Judicial-I and provide copies to the parties.
- (v) Parties to appear before the Sole Arbitrator on the date fixed.
- (vi) Fees of the Sole Arbitrator will be payable in accordance with the Bombay High Court (O.S.) Rules, 2018.
- (vii) Arbitration Petition is disposed of in the above terms.
- (viii) There shall be no order as to costs.

[R.I. CHAGLA J.]