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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.187 OF 2023

Mirza Abdul Qais Sharfuddin Baig & Ors. ...Petitioners

Versus

Shaikh Rizwan Shaikh Usman Qureshi & Ors. ...Respondents

Mr. Mayur Khandeparkar with Rohan Sawant, Mr. Laxman Jain, Mr. Rohit Bamne and Mr. Yogesh Adhia for the Petitioners.

Mr. Sharique Nachan with Momin Musaddique with Mohd Taha Musaddique i/b. Momin for Respondent No.1.

M. Nawaz Haindaday with Gazala Shaikh i/b. Fidexm Lex for Respondent Nos.2 to 5.

CORAM : R.I. CHAGLA J.
DATE : 25TH OCTOBER, 2023.

ORDER :

1. By this Arbitration Petition, the Petitioner is seeking appointment of Sole Arbitrator as per clause XXI of Deed of Partnership dated 6th June, 2020 to adjudicate the disputes or claims arising between the parties.

2. Under Clause XXI of the said Deed of Partnership, the parties are to first engage in a good faith negotiations to resolve the dispute. In case the dispute is not settled within 15 days, it shall be

referred to single conciliator / mediator as agreed by all the partners. Further, in Clause XXIIb, it is provided that in the event the dispute is not resolved through conciliation and / or mediation, then any dispute, controversy or claim arising out of or relating to this deed or the breach, termination or invalidity thereof shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (“the said Act”). In Clause XXIIc, the arbitral tribunal shall consist of sole arbitrator appointed by mutual consent of all the partners and the award of such arbitrator shall be final and binding on the parties. In Clause XXIIId, it is provided that the place of arbitration shall be at Malegaon and any award whether interim or final, shall be made, and shall be deemed for all purposes between the parties to be made in Malegaon.

3. Pursuant to Deed of Partnership, the Respondents had through their Advocate’s Notice dated 8th October, 2022 invoked conciliation after failure of the negotiations between the parties. The conciliation is as per sub clause (a) of Clause XXI of the Deed of Partnership.

4. By letter dated 10th October, 2022, the Petitioner had

responded to the said Notice dated 8th October, 2022 addressed by the Advocates for the Respondents wherein they had referred to Clause XXI of the said Deed of Partnership and in particular the dispute resolution mechanism referred therein. Further, it is mentioned therein that in June, 2022, the Petitioners and the Respondents had appointed Mr. Matlub Qureshi as mediator to mediate the disputes between the Petitioners and Respondents. The last offer sent by the Respondents to the Petitioners through the said Mr. Matlub Qureshi on 21st September, 2022 had been rejected and the same had been communicated by the Petitioners to the Respondents through Mr. Matlub Qureshi. Hence, it is stated that there is no question of mediation or conciliation now. Accordingly, the contents of the said Notice dated 8th October, 2022 has been denied and it is stated that there is no question of now agreeing for appointment of a conciliator.

5. The Petitioners through their Advocate's Notice dated 15th July, 2023 addressed to the Respondents had invoked arbitration under Clause XXI of the said Deed of Partnership dated 20th June, 2020. The suggested names of arbitrators have been mentioned in the said Notice. Further, reference has been made to

the proceedings under Section 9 of the Arbitration Act which had been filed by the Petitioners before the Civil Judge, Senior Division, Malegaon for interim reliefs. It is further mentioned in the said Notice that the Respondents had been repeatedly requested to furnish books of accounts of the firm which were not forthcoming and for which the mediator Mr. Matlub Qureshi was involved to resolve the impasse between the Petitioners and the Respondents. However, the Respondents failed to furnish the books of accounts inspite of mediation and thus such attempts failed.

6. The Notice invoking the arbitration had been delivered to the Respondents but there was no response to the said Notice. Accordingly, the present Arbitration Petition has been filed.

7. A preliminary objection has been raised by Mr. Nachan, the learned Counsel for the Respondent No.1 namely that in the said Deed of Partnership reference is made to the Deed of Declaration separately signed on the same date which has been inadequately stamped and hence the disputes cannot be referred to arbitration till the Deed of Declaration dated 6th June, 2020 is impounded and adjudication of stamp duty by the stamp authorities. Mr. Nachan has

referred to Section 34 of the Maharashtra Stamp Act, 1958, wherein it is provided that the instruments not duly stamped are inadmissible in evidence. He has submitted that in view of the said Deed of Declaration being inadequately stamped it would be appropriate for this Court to impound the said Deed in accordance with the aforementioned provisions of the Maharashtra Stamp Act and which requires to be sent for adjudication by the Collector for issuance of adjudication Certificate under Section 32 of the Maharashtra Stamp Act, 1958.

8. Mr. M. Nawaz Haindaday, the learned Counsel for the Respondent Nos.2 to 5 has raised preliminary objection to the Petition on the ground that the said Deed of Partnership is void as it has been inter alia executed by Respondent Nos.4 and 5 who are the minors and hence could not have been admitted as partners in the Firm incorporated by the said Deed of Partnership. He has referred to Section 11 of the Contract Act which provides that a person is competent to contract who is of the age of majority according to the law to which he is subject. He has accordingly submitted that said minors could not have contracted with the other parties to the Deed of Partnership. He has further submitted that under Section 30 of the

Partnership Act, 1932, a minor may be admitted to the benefits of partnership with consent of all partners only for the time being and cannot be made partners of the partnership firm. He has submitted that the said Deed of Partnership is void. Mr. Haindaday in order to show that Respondent Nos.4 and 5 are minors placed reliance upon the copies of Aadhar cards which have been annexed to the said Deed of Partnership and wherein the Respondent Nos.4 and 5 are shown as having been born in the year 2006 and thus were minors when the Deed of Partnership was executed by them in the year 2020 i.e. 6th June, 2020. He has accordingly submitted that the disputes arising in a partnership agreement which is void cannot be referred to arbitration.

9. Mr. Khandeparkar, the learned Counsel for the Petitioners has dealt with the preliminary objections. He has submitted that there is a valid arbitration agreement under Clause XXI of the Deed of Partnership. Further, the said Deed of Partnership has been adequately stamped after objection was taken by the Respondent and the Authority contemplated under the Maharashtra Stamp Act namely the Collector of Stamps has endorsed the Certificate under Section 32 of the Maharashtra Stamp Act, certifying that the Deed of

Partnership has been duly stamped. He has accordingly submitted that there is no merit in the preliminary objection taken on behalf of the Respondent No.1 as the relevant Deed of Partnership containing the arbitration clause has been adequately stamped.

10. Mr. Khandeparkar has further submitted that Deed of Declaration is a separate agreement. The Petitioners have not referred their disputes under the said Deed for arbitration. In any event the said Deed of Declaration does not contain an arbitration clause and the only arbitration clause which the Petitioners have invoked is Clause XXI of the said Deed of Partnership and this is borne out from the Notice invoking arbitration dated 15th July, 2023. He has submitted that the mere fact that the Deed of Declaration is referred to in the Deed of Partnership and which Deed is contended to have been inadequately stamped cannot come in the way of this Court appointing an Arbitrator under Section 11 of the arbitration Act, particularly where there is a valid arbitration clause in a duly stamped document viz. the said Deed of Partnership.

11. Mr. Khandeparkar has dealt with the other preliminary objection regarding the Respondent Nos.4 and 5 as

minors having signed the said Deed of Partnership. He has submitted that the father of Respondent Nos.4 and 5 was also a signatory of the Deed of Partnership and being their natural guardian represents the interest of the said minors. Under Section 20 of the Partnership Act, it is provided that the minors may be admitted to the benefit of partnership with consent of all partners. He has submitted that the only restriction is that the minors are not personally liable for the acts of the firm. Thus, there is no merit in this preliminary objection which can in any event be raised before the Arbitrator upon his appointment.

12. Having considered the submissions, in my view a Court under Section 11 of the Arbitration Act is required to determine whether there is a valid arbitration agreement and if so, the disputes under the agreement are to be referred to arbitration. It is not for the Court under Section 11 to go into issues with regard to the whether the Deed of Partnership is valid on the ground of minors executing the Deed of Partnership and it would be best left to the arbitrator appointed to determine such issues. In any event, the father of the minors i.e. Respondent Nos. 4 and 5 being their natural guardian has executed the said Deed of Partnership and is having the

capacity to represent the minors, including in the arbitral proceedings upon the appointment of the arbitrator under Section 11 of the Arbitration Act.

13. I further do not find any merit in the contentions raised on behalf of the Respondent No.1 that the Deed of Declaration is inadequately stamped and accordingly is required to be impounded and referred to the Collector under Maharashtra Stamp Act for adjudication prior to this Court exercising its jurisdiction under Section 11 of the Arbitration Act. The reliance placed by Mr. Nachan on Section 34 of the Maharashtra Stamp Act is misplaced in context of the present Petition. Section 34 of the Maharashtra Stamp Act is with regard to inadmissibility of instruments not duly stamped in evidence. This issue will not arise in a Petition under Section 11 of the Arbitration Act, particularly when this Court finds that there is a valid arbitration agreement in Clause XXI of a duly stamped Deed of Partnership. It is this arbitration agreement which has been invoked by the Petitioners and pursuant to which the present Arbitration Petition has been filed. I further find that the proceedings contemplated under Clause XXI of the said Deed of Partnership has been duly followed by the parties viz. the mediation / conciliation

proceeding which have been held by the jointly appointed mediator Mr. Matlub Qureshi and upon failure of mediation / conciliation, the Notice invoking the arbitration dated 15th July, 2023 has been issued.

14. Thus, in my view this is a fit case for appointment of sole arbitrator under the arbitration agreement in Clause XXI of the said Deed of Partnership. This is by keeping the rights and contentions of the parties including the contention of the Respondent as to lack of jurisdiction of the arbitrator expressly open to be raised before the arbitrator appointed by this Court. Hence, the following Order:-

(i) Mr. Aseem Naphade, Advocate of this Court, is appointed to act as Sole Arbitrator to decide the disputes arising out of the Deed of Partnership and as per the arbitration agreement under Clause XXI of the said Deed between the Petitioner and the Respondent.

(ii) The venue of arbitration shall be Mumbai as per consent of parties, though it is provided under the arbitration agreement

as Malegaon as per Clause XXId of the said Deed of Partnership.

(iii) Office to inform the Sole Arbitrator regarding his appointment.

(iv) The Sole Arbitrator is requested to file his 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) No costs.

[R.I. CHAGLA J.]