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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION APPLICATION (L) NO.38221 OF 2022

HKS INC] ... Applicant
vs.
JSM HKS LLP] .. Respondent

COMMERCIAL ARBITRATION PETITION NO.138 OF 2023

WITH

INTERIM APPLICATION (L) NO.15642 OF 2023

IN

COMMERCIAL ARBITRATION PETITION NO.138 OF 2023

WITH

COMMERCIAL ARBITRATION PETITION (I) No.38220 OF 2022

WITH

INTERIM APPLICATION (L) NO.15898 OF 2023

IN

COMMERCIAL ARBITRATION PETITION (L) NO.38220 of 2022

Mr.Ashish Mehta a/w Aarya More and Sneha Mahavar i/b Ethos Legal Alliance for Applicants in CARAPL No.38221/2022 and CARBPL No.38220/2022 and for the Respondents in CARAPL No. 138/2023.

Mr.Satchit Bhogale i/b Natasha Bhot for Respondents in CARBPL No.38220/2022 and for the Petitioners in CARBP No.138/2023.

CORAM : BHARATI DANGRE, J

DATE : 16th June, 2023

P.C.

1] The Arbitration Application under Section 11 listed alongwith Arbitration Petitions under Section 9, seek appointment of Arbitrator to decide the dispute arising out of the Partnership Deed entered between the respective parties on 16.04.2019.

2] The background facts would reveal that HKS INC alongwith alongwith Applicant No.2, Hironya Kumar Saikia, in Commercial Arbitration Application(L) No.38221/2022 approached the Respondent No.2 to open a Hard Rock Cafe in Assam and pursuant to the negotiations, an understanding was arrived at, which found its way in the LLP Agreement.

A dispute arose between the parties to the Agreement and it is alleged that Respondent No.2 terminated the LLP. An Arbitration Petition was filed in Guwahati, but subsequently it was withdrawn and even an attempt was made to resolve the dispute through amicable settlement, but the parties were unsuccessful.

3] In any case, since the dispute persist between the parties and both rival parties have invoked arbitration and even filed distinct applications under Section 11 of the Arbitration and Conciliation Act for appointment of Sole Arbitrator as contemplated in Clause 27, which clearly stipulate that the Partners shall endeavor to settle, by mutual consultation, any claim, dispute or controversy, arising out of the Agreement, but the dispute which cannot be resolved through such consultation, shall be finally settled by Arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

4] Since there is no dispute between the respective counsel representing rival parties that disputes have arisen between them and this necessarily must be referred to arbitration and since both the parties have filed their Applications under Section 11 of the Act, seeking appointment of Arbitrator, but as there is no consensus to the name of the Arbitrator, they have invoked jurisdiction of this court for appointment of an Arbitrator.

It is agreed between them, that the Arbitration Petitions filed by them under Section 9 of the Act can be converted into Applications under Section 17 before the Arbitrator and the Arbitrator, after entering reference shall decide the Applications as early as possible and within a period of 8 weeks from today.

5] Both the parties have filed distinct applications in their Section 9 Petitions alleging that certain publications have brought disrespect to their clients. However, the respective counsel undertake that while the arbitration proceedings are pending, they will desist themselves from making any such publication or any comment or remarks, which would adversely affect the proceedings.

6] The attention of the Arbitrator may also be invited to the order dated 07.09.2022, and the Arbitrator may either continue or vacate the said order.

However, till the time the Arbitration proceedings come up before the learned Arbitrator, the order dated 07.09.2022 passed in Commercial Arbitration Petition (L) No.9464/2022 shall continue to remain in force.

7] In the wake of above, I deem it appropriate to exercise powers

conferred on this Court under sub Section (6) of Section 11 of the said Act and appointment Mr.Justice Sandeep K. Shinde (Retired) to resolve the disputes between the parties, on the following terms :

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Mr.Justice Sandeep K. Shinde, (Retired) , is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The learned Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application, with a copy to be forwarded to both the parties.

(d) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 03/07/2023. 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 information of the parties : Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address

as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(f) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) Fees : The learned Arbitrator shall be entitled for the fees as per the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All contentions of both sides are left open to be raised by the respective parties before the Arbitral Tribunal, in accordance with law.

Arbitration Application alongwith Arbitration Petitions and Interim Applications stand disposed off in the aforesaid terms.

[BHARATI DANGRE, J]