

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.139 OF 2023

Jagdish Himatlal Mehta ... Petitioner
Vs.
Rajnikant Himatlal Mehta and others ... Respondents

WITH
COMMERCIAL ARBITRATION PETITION NO.141 OF 2023
WITH
COMMERCIAL ARBITRATION APPLICATION NO.25 OF 2023
WITH
COMMERCIAL ARBITRATION APPLICATION NO.32 OF 2023

Mr. Shanay Shah a/w. Mr. Piyush M. Shah for Petitioner.

Mr. Mangesh Shinde i/b. Mr. Satish Agarwal for Respondent Nos.1 and 2 in Petitions as well as Applications.

Mr. Mayur Khandeparkar i/b. Mr. A. R. Shaikh and Mr. Mangesh Shinde for Respondent Nos.3 and 4 in CARBP/141/2023.

Mr. Omar Khaiyam Shaikh for Respondent No.4 in CARBP/139/2023.

Mr. Vishal Kanade i/b. Mr. S. D. Mishra (ASD Associates) for Respondent No.5 in CARBP/141/2023.

CORAM : MANISH PITALE, J.
DATE : DECEMBER 20, 2023

P.C. :

. In these proceedings, two petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 and two applications filed under Section 11 thereof have come up for consideration.

2. The applications under Section 11 of the Act have been filed on the basis that arbitration was invoked by the applicant in both these applications on the basis of an arbitration clause found in the deeds of partnership, concerning two partnership firms i.e. MD Enterprises and D M Associates of which the parties to the applications, filed under Section

11 of the said Act, are all partners. Disputes have arisen between the partners and hence, the applicant in these applications seeks appointment of an arbitrator as the arbitration proceeding could not be initiated on the basis of the invocation notices. In both the applications, invocation notices dated 19.03.2022 were issued on behalf of the applicant to which, there was no response from respondent Nos.2 and 3 i.e. the other partners of the respective partnership firms.

3. As the agreed procedure for appointment did not lead to appointment of arbitrator, this Court is inclined to exercise power under Section 11(6) of the said Act for appointment of the arbitrator. The material on record indeed shows that there are arbitrable disputes between the parties and therefore, it would be appropriate that the two applications filed under Section 11 of the said Act are allowed.

4. In view of the above and considering the nature of disputes between the parties, by consent of the parties to these applications, Mr.Gaurav Mehta, Advocate is appointed as the sole arbitrator. The details of the learned arbitrator are as follows:-

Advocate Gaurav Mehta

1st Floor, Hamam House,
Hamam Street, Fort, Mumbai
Mobile No. 98201 93592

5. The parties to these applications shall inform the learned arbitrator at the earliest about the order passed today.

6. Learned Arbitrator is requested to communicate his consent and disclosure statement in terms of Section 11(8) and 12(1) of the aforesaid Act to the Prothonotary and Senior Master of this Court, within three weeks from today.

7. The fees of the learned Arbitrator shall be fixed in terms of the

Fourth Schedule to the aforesaid Act.

8. The learned arbitrator will take up the two arbitral proceedings, which stand referred to him, as a consequence of Commercial Arbitration Application Nos.25 of 2023 and 32 of 2023 being allowed by the present order.

9. All questions are kept open for decision of the learned arbitrator.

10. As regards Commercial Arbitration Petition Nos.139 of 2023 and 141 of 2023, filed under Section 9 of the said Act, this Court finds that third parties have been added to these proceedings with specific prayers sought to be pressed against them. These third parties are co-operative housing societies whose premises were to be redeveloped by the two partnership firms with which the petitioner and respondent Nos.1 and 2 in these proceedings are concerned. It appears that in both cases, the respective co-operative housing societies have now engaged third party developers for carrying out the redevelopment work.

11. The petitioner in Commercial Arbitration Petition No.139 of 2023 is ready to delete the third parties i.e. respondent Nos.3 and 4. The learned counsel appearing for the petitioner has specific instructions in that regard. Accordingly, respondent Nos.3 and 4 are deleted from Commercial Arbitration Petition No.139 of 2023. This is in the backdrop that the remaining respondents i.e. partners of the partnership firm have now agreed for their *inter se* disputes being referred to arbitration before the learned arbitrator appointed hereinabove.

12. In this backdrop, the learned counsel for the petitioner in Commercial Arbitration Petition No.139 of 2023 submits that this Court may reserve liberty for the petitioner to file an appropriate application under Section 17 of the said Act before the learned arbitrator.

13. Accordingly, Commercial Arbitration Petition No.139 of 2023 is disposed of with liberty to the petitioner to move the application under Section 17 of the said Act before the learned arbitrator.

14. In Commercial Arbitration Petition No.141 of 2023, the learned counsel appearing for the petitioner, on instructions of the petitioner who is present in Court, submits that since the petitioner intends to seek specific reliefs against the third parties i.e. respondent Nos.3, 4 and 5, the petitioner intends to file a substantive suit in that regard. On the basis of the aforesaid statement, the petitioner desires to withdraw the present petition as against the said respondents. It is further stated that insofar as reliefs being claimed against the partners of D M Associates i.e. respondent Nos.1 and 2, the petitioner seeks liberty to move before the learned arbitrator, who is appointed by this order, by filing an appropriate application under Section 17 of the aforesaid Act.

15. In view of the above, Commercial Arbitration Petition No.141 of 2023 is disposed of as withdrawn as against respondent Nos.3, 4 and 5, in the light of the statement made hereinabove on behalf of the petitioner, with liberty to file suit against them to seek appropriate reliefs.

16. As regards respondent Nos.1 and 2, the said petition is disposed of with liberty to the petitioner to file appropriate application under Section 17 of the said Act before the learned arbitrator.

17. Commercial Arbitration Petitions and Applications stand disposed of accordingly.

(MANISH PITALE, J.)