

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.122 OF 2022

Rasseek Hariya] .. Applicant
vs.
M/s.Naminath Dreams & Ors.] .. Respondents

Mr.Yogesh Patil i/b P S Legal for the Applicant.

Mr.Rohan Agrawal i/b Yahya Batatawala for Respondents.

CORAM : BHARATI DANGRE, J

DATE : 19th JANUARY, 2023.

P.C.

1] By the present Application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the Applicant – one of the partner of Respondent No.1-M/s.Neminath Dreams, is seeking appointment of Sole Arbitrator to adjudicate the disputes that have arisen between the parties out of Deed of Partnership.

The Deed of Partnership was deemed to have commenced its operation on 06.07.2011 and the rights and liabilities of the respective partners were set out in the said Deed, with a clause providing for reference to arbitration under the Arbitration and Conciliation Act, in case of any dispute arising between the parties, in respect of the partnership.

The Applicant plead that arbitration was invoked by the applicant, but since there was no response at the end of the Respondents, he has moved this Court seeking appointment of Sole Arbitrator to adjudicate the disputes.

2] The learned counsel representing Respondent No.1 as well as other Respondents, who are partners of Respondent No.1 do not dispute the fact that disputes have arisen between the parties and they must be referred for arbitration in the wake of Clause 12 contained in the Deed of Partnership. He also do not dispute the fact that arbitration has been invoked by the Applicant.

3] In the wake of aforesaid statement coming from the learned counsel for the Respondents, I deem it appropriate to exercise power conferred under Sub Section (6) of Section 11 of the Act of 1996 by appointing Sole Arbitrator subject to the following terms and conditions:

ORDER

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Mr.Vishal Kanade, Advocate, 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 06/02/2023. 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 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 the rights and contentions of the parties are kept open.
Commercial Arbitration Application is disposed off in the
aforesaid terms.

[BHARATI DANGRE, J]