

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 184 OF 2023**

Schindler India Pvt Ltd

...Applicant

Versus

Ved Prakash Mithal & Sons & Ors

...Respondents

Ms Shilpa Kapil, for the Applicant.

CORAM Kamal Khata, J.

DATED: 20th December 2023

PC:-

1. This is an Application under Section 11 of The Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) to seek appointment of an Arbitrator.
2. The arbitration clause no. 18 in the Contract of 15th October 2018 evinces that upon disputes, controversies or claims arising between the parties, and on failure to resolve the same within 15 days amicably, the matter may be resolved by referring it to arbitration.
3. By notice dated 28th July 2022 to the Respondents the Applicant invoked arbitration. The part payments (out of the outstanding payments) to the Applicant were made on 27th

December 2021 and 11th February 2022 as averred in paragraph 9 of the application.

4. The Arbitration Application was served on the Respondents on 17th September 2022. An Affidavit acknowledging service was filed on 16th December 2023. The matter came up on 18th December 2023 where in spite of service none remained present.

5. With a view to grant an opportunity to the Respondents the matter was placed today. The Respondents were put to notice that the matter would proceed exparte if they were not represented.

6. Ms Kapil has notified the Respondents by two emails dated 18th December 2023 and 19th December 2023 whereby she communicated the order of 18th December 2023. Even today no one is present for the Respondents. In view thereof, the matter proceeded exparte.

7. I thus pass the following order: -

(i) Mr Vivek Khemka is appointed as a Sole Arbitrator to decide the disputes between the Applicant and the Respondents arising out of the Agreement dated 15th October 2018.

(ii) Parties to appear before the Sole Arbitrator on a date to be fixed by him at his earliest convenience.

(iii) The Sole Arbitrator is requested to file his Disclosure Statement as per Section 11(8) under section 12(i) of Arbitration Act within a period of three weeks from the date of receipt of the notice issued by the Prothonotary and Senior Master and provide copies to the parties.

(iv) Fees of the Sole Arbitrator will be payable in accordance with the Bombay High Court (O.S.) Rules, 2018.

(v) Arbitration Application is disposed of in the above terms.

(vi) No costs.

(vii) Office to notify the Arbitrator about his appointment.

8. The application under Section 9 shall be treated as an application under Section 17 to be decided by the Arbitrator.

9. Commercial Arbitration Petition (L) No. 29268 of 2022 shall also stand disposed of accordingly.

(Kamal Khata, J)