

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.210 OF 2022
WITH
INTERIM APPLICATION (L) NO.6889 OF 2023
IN
COMMERCIAL ARBITRATION APPLICATION NO.210 OF 2022

Mr.Ashish Kamat, Senior Advocate a/w Sanjana Das, Priyanka Chaddha i/b Mehta @ Padamsey for the Applicant.

Mr.Karl Tamboly a/w Anuj Desai i/b Amina Usman for Respondent No.1.

Ms.Jaymala Oswal i/b JJ Associates for Respondent No.2.

DATE : 04th July, 2023.

2] By the present Arbitration Application, the Applicant seek reference of the disputes arising out of the Partnership Deed, to arbitration, in terms of Clause 22, which indicate the disputes arising

be referred to a Sole Arbitrator or Panel of Arbitrators. I deem it necessary to reproduce the said clause.

“22. All disputes and questions whatsoever which shall either during the subsistence of the partnership or after wards arise between the partners or between one or more of them and the legal representatives of other or others or between their respective legal representatives touching this deed or the construction or application thereof or any clause or thing herein contained or any account, valuation or division of assets, debts or liabilities to be made hereunder or as to any other matter in anyway relating to the partnership business or the affairs thereof or the rights, duties or liabilities of any person under this deed shall be referred to the arbitration of a Single Arbitrator in case the parties agree upon one otherwise to two Arbitrators one to be appointed by each party to the difference in accordance with and subject the provisions of the Indian Arbitration & Conciliation Act, 1999 or any statutory modification or re-enactment thereof for the time being in force.”

3] Since the clause clearly indicate that if the parties express their consensus, then the disputes/differences, can be referred to a Sole Arbitrator.

The learned counsel for Respondent No.2 on the last date made a specific statement that she has no objection for the disputes being referred to Arbitrator.

The learned counsel for Respondent No.1 also expressed his consensus over the name of the Arbitrator and state that disputes can be referred to a Sole Arbitrator, but he also express apprehension about his stand before the Arbitrator being defeated on account of the fact that the partners who have retired from the Partnership Deed and who have transferred their shares/holdings in favour of the Applicant, are not parties to the Application.

4] In any case, it is always open for Respondent No.1 to invoke arbitration against other partners as well, and even file counterclaim before the Arbitrator, appointed by consent of the parties, upon the Applicant invoking the arbitration.

5] Keeping the said contention open, since the parties have expressed consensus over the name of the Arbitrator, I accept the same and appoint Mr.Justice Anil Menon (Retired Judge) to act as a Sole Arbitrator.

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Mr.Justice Anil Menon (Retired Judge), 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 24/07/2023. 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.

Commercial Arbitration Application and Interim Application stand disposed off in the aforesaid terms.

[BHARATI DANGRE, J]