

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.1 OF 2023

Ms.Aalishah Sharma i/b Dhruve Liladhar & Co. for the Applicant.
Ms.Ankita Phadke a/w Rijul Khandare for the Respondent.

DATE : 26th June, 2023.

1] An Academic Alliance Agreement dated 01.08.2016 for setting up a K-12 school at Hinjewadi, Pune, under the brand name of 'Mount Litera Zee School', consist of a clause for resolving the disputes arising between the parties.

The clause also stipulate that the Arbitrator shall be appointed by Zee Learn Limited and the place of Arbitration shall be Mumbai.

2] Since the disputes arose between the parties, the Applicant invoked arbitration vide its communication dated 27.09.2022, indicating the dispute and specifically stating that there was failure on the part of Respondent to comply with the obligations and fees towards Academic Support and Guidance, Teacher Training, extra and curricular activities amounting to Rs.23,60,190/- which is due and payable. The damages were also claimed in the said notice.

Subsequently the Applicant also terminated the Agreement by notice dated 27.09.2022.

3] The respective counsel are at ad idem about existence of dispute between the parties and also as to the effect that the dispute deserve to be resolved through mechanism prescribed in the Agreement itself, which contemplate it being referred to a Sole Arbitrator.

However, though the clause contemplate that the Sole Arbitrator shall be appointed by the Applicant, in the wake of settled position of law, it cannot appoint an Arbitrator unilaterally.

In this situation, when there is no dispute about existence of valid arbitration clause between the parties and the parties are unable to resolve the dispute mutually, I deem it appropriate to appoint Advocate Mr.Dorman Dalal, to resolve the disputes between the parties, subject to the following order :

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Advocate Mr.Dorman Dalal, 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 10/07/2023. 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 stands disposed off in the aforesaid terms.

[BHARATI DANGRE, J]