

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

**APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO. 3 OF 2024**

BEYOND MOTION INDIA PVT.
LTD THR. ITS DIRECTOR, VIPUL
PASAD ... APPLICANT

VS

LA CALYPSO HOTELS (P) LTD.,
THR. ITS MANAGING DIRECTOR,
KAUSHAL KHANNA ... RESPONDENT

Mr. D. Lawande with Mr. Jay Mathew, Advocates for the
Applicant.

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates
for the Respondent.

CORAM: AVINASH G. GHAROTE, J.

DATED: 26th MARCH 2024

P.C.

1. There is no dispute between the parties that the agreement dated 09.03.2021 between the parties hereto contains dispute resolution clause 9 which contemplates arbitration. It is also not in dispute that the clause was invoked by notice dated 12.10.2022 (page 153), the receipt of which is not disputed by the Respondent. The reply of the Respondent in that regard is dated 17.11.2022 (page 161). The only objection raised by Mr. Bhobe, learned Counsel for the Respondent is that the appointment procedure

contemplates an attempt at amicable settlement first, which according to him has not taken place in its true spirit.

2. It is however not disputed that during the pendency of the proceedings under Section 9 before th CJSD, Mapusa in Case No. 8 of 2021, an attempt for amicable settlement has failed, which is reflected, from the order sheet dated 17.05.2022 in the aforesaid proceedings. In that view of the matter clause 9.2 of the arbitration clause stands satisfied.

3. Arbitration clause 9.2.ii. contemplates appointment of one Arbitrator each by the parties in view of which, the Applicant has already in its notice dated 12.10.2022 nominated Justice (Retd.) Vinod Kumar Gupta, Former Chief Justice of High Court of Uttarakhand as his Arbitrator. Though it was suggested by Mr. Bhobe, learned Counsel for the Respondent that a sole Arbitrator by consent be appointed, that however, is not acceptable to the Applicant, to which Mr. Bhobe has suggested the name of Justice (Retd.) F.M. Reis, Former Judge of High Court of Bombay at Goa as the nominee of the Respondent, considering which, the Application is disposed of by constituting an arbitration panel comprising of Justice (Retd.) Vinod Kumar Gupta, Former Chief Justice of High Court of Uttarakhand and Justice (Retd.) F.M.

Reis, Former Judge of High Court of Bombay at Goa as the respective nominees of the parties hereto, who in turn in terms of clause 9.2.ii. of the agreement shall appoint a third Arbitrator to complete the panel of Arbitrators. The Arbitrators shall make disclosure under Section 12 of the Arbitration and Conciliation Act. The fees of the Arbitrators shall be paid as per the 4th Schedule of the Arbitration and Conciliation Act. The parties shall appear before the Arbitrators on 08.04.2024, to intimate them about their appointment by placing a copy of this order before them so that the further process of appointment of the third Arbitrator can commence.

4. The Application is accordingly disposed of in the aforesaid terms. No costs.

AVINASH G. GHAROTE, J.

ESHA SAINATH
VAIGANKAR

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