

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO.09 OF 2022

Enkay Converged Technologies LLP .. Petitioner
& Anr.

Versus

Enkay Technologies (India) Private .. Respondent
Limited

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Mr.Madhur Baya with Ms.Nikita Banatwala and Mr.Raghav
Sharma for the Petitioner.

Mr.Sarosh Bharucha with Mr.Jay Zaveri, Ms.Rhea P and
Mr.Vinay Khatri i/b Crawford Bayley & Co. for the Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 08th JANUARY, 2024

P.C:-

1. By the Asset Purchase Agreement executed between the two entities, Enkay Technologies (India) Pvt. Ltd.(seller) and Enkay Converged Technologies LLP & Arvind Ltd. (Buyers), the seller had agreed to sell, convey and assign to the buyers the Assets and the buyers agreed to purchase all rights, title and interest in the assets, as defined in the Agreement for the purchase price and upon terms and conditions contained in the Agreement.

The Agreement set out the necessary particulars, subject to which the arrangement was arrived between the parties.

Clause No.13.1 of the said Agreement specifically stipulate that any dispute arising out of or in connection with the contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by a sole Arbitrator, to be mutually appointed by the parties, in accordance with the Arbitration and Conciliation Act, 1996. The clause also stipulated that seat of arbitration shall be in Pune.

2. The existence of the above clause in the Agreement is not in dispute, so also it's invocation. Since there was no response at the end of the Respondent for appointment of the Arbitrator, the Application is filed under sub-section (6) of Section 11, seeking appointment of a sole Arbitrator to adjudicate the dispute between the parties, which have arisen out of the Asset Purchase Agreement.

3. By consent, the respective counsel representing the parties agree that the arbitration shall be conducted in Mumbai, though the Agreement has specifically assigned the seat of arbitration as Pune.

4. By consensus, Mr.Kazan Shroff, an Advocate of this Court, is appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the document referred to above.

The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the Arbitrator shall fix up a

first date of hearing in the week commencing from 29/01/2024. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

The sole Arbitrator shall be entitled to the fees prescribed under 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.

Needless to state that all the contentions of both the sides are left open, to be raised by the respective parties before the Arbitral Tribunal, in accordance with law, including the aspect of stamping of the document.

5. Commercial Arbitration Petition No.09 of 2022 stands disposed off in the aforestated terms.

(SMT. BHARATI DANGRE, J.)