

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.7 OF 2022

Sheetalkumar Sudhakar Manere] .. Petitioner

vs.

Godawat Consumer Products LLP & Ors.] .. Respondents

Mr.Atul Damle, Senior Advocate a/w Yuvraj Narvankar and Raufa Shaikh for the Petitioner.

Mr.Amogh Singh a/w Rahul Arora for the Respondents.

CORAM : BHARATI DANGRE, J

DATE : 29th January, 2024.

P.C.

1] A Limited Liability Partnership Agreement for Ghodawat Beverages LLP dated 30.12.2013 comprise of an Arbitration clause in form of Clause No.34, which reads thus :-

34. Arbitration

“All disputes and differences whatsoever which shall arise between the partners or between the partners and the personal representatives of the deceased partner relating to any matter or between partner and LLP whatsoever touching the affairs of the LLP or the interpretation of this Agreement shall be referred to a single arbitrator, if the parties agree upon one, otherwise to three arbitrators one to be appointed

by each party to the difference in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force.

The partners agree that the decision shall be the sole, exclusive and binding remedy between them regarding any and all disputes, controversies, claims and counter-claims presented to the arbitrators. If a decision is not complied with by a partner, then any award or decision may be entered in a court of competent jurisdiction for a judicial recognition of the decision and an order of enforcement.”

2] The Petitioner, one of the signatory to the Agreement has filed the present Petition, seeking appointment of Sole Arbitrator, so as to resolve the disputes that have arisen with the Respondents i.e. the LLP and its two partners and the nature of disputes and differences is set out in the Petition in great detail.

It is the specific case of the Petitioner that his claims are sought to be extinguished by a projected Deed of Retirement dated 01.04.2017, but in fact the amounts assured under the said Retirement Deed were never paid, in lieu of the right, title and interest in the business of the LLP including its assets, goodwill, licenses etc. and it is specifically pleaded, that the Retirement Deed is void since it is actuated by misrepresentation and fraud and the very basis of the Retirement Deed was alleged and purported losses of the LLP.

It is, in this background, the arbitration was invoked by claiming the said amount and seeking appointment of Sole Arbitrator, to resolve the disputes being specifically set out in the notice invoking arbitration issued on 02.10.2020.

3] The learned counsel Mr. Singh representing the Respondents do not dispute the existence of arbitration clause or its invocation, but he would canvass that the Applicant has retired by virtue of the Retirement Deed and, therefore, he has no right to invoke arbitration and seek appointment of an Arbitrator.

The above argument, in my considered view, do not hold any substance, since the Clause 34 of the LLP is widely worded and would cover all disputes and differences arising between the partners or between the partner in the LLP, whatsoever, touching the affairs of the LLP, and the nature of the disputes projected in the notice invoking arbitration and definitely warrant appointment of an Arbitrator, to resolve the same.

4] Since the clause contemplate that, if the parties agree they can be referred to Sole Arbitrator or else a Panel of Arbitrators, I deem it appropriate to appoint Mr. Justice Rajesh Ketkar (Retired) to adjudicate the disputes and differences that have arisen between the Petitioner and the Respondents.

The details of the proposed Arbitrator are as under :-

Mr.Justice Rajesh Ketkar (Retired)

Address : Office No.202, Dalaval Chambers,
Behind Income Tax Building,
Near Balwas Restaurant, New Marine Lines,
Churchgate, Mumbai – 400 020.

Email : rgketkar1@gmail.com

5] The Arbitrator shall, within a period of 15 days before entering the arbitration reference forward a statement of disclosure as contemplated u/s.11(8) r/w Section 12 of the Arbitration and Conciliation Act, 1996, to the Registrar (Judicial I), Appellate Side, Bombay High Court to be placed on record.

The Arbitrator, shall after entering the reference fix the date of first hearing and issue further directions as are necessary.

The Sole Arbitrator shall be entitled for the fees as per 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.

6] All rights and contentions of the parties are kept open.

[BHARATI DANGRE, J]

Corrected as per Speaking to the Minutes of order dated 21.02.2024