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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 82 OF 2024

M/s. Morphogenesis

...Petitioner

Versus

GG Metropolis Pvt. Ltd.

...Respondent

Mr. Devashish Godbole a/w Vibhav Gadre and Mehernaaz Contractor i/by
Akshay Bafna for the Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 24th JUNE, 2024

P.C.-

1. This is a Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitral Tribunal as per clause XXIII of the Agreement dated 8th September, 2021, which is executed between the Petitioner and the Respondent.

2. Learned Counsel for the Petitioner invites my attention to the said Agreement and submits that in terms thereof there was a clause for mediation/conciliation i.e. clause XXIII of the Agreement. He submits that despite the conciliator being appointed as per the said clause, the Respondent did not appear before the conciliator and thus the conciliator by a letter dated 29th December, 2023 recorded that conciliation proceedings had failed. Mr. Godbole then invited my attention to communication dated 8th January, 2024 titled

This order is corrected pursuant to speaking to the minutes order dated 5th July, 2024

Shubham

Arbitration Notice addressed inter alia to Respondent. From the same, he pointed out that the Petitioner has in terms of the said Agreement had invited three individuals to be Arbitrators and sought the Respondent's confirmation. He submits that despite this notice being duly served upon the Respondent, the Respondent has chosen not to respond to the same. He invites my attention to the tracking report at page No.150 of the Petition to show due service of the Arbitration notice upon the Respondent.

3. After having heard Mr. Godbole and with his assistance going through the documents on record, I find that there has been due invocation of Arbitration as also there being disputes and differences do not appear to be non-arbitral. In any event since none has appeared to oppose the present Petition on behalf of the Respondent, I deem it fit to allow the present Petition in terms of prayer clause (a) which reads thus:

"a. That this Hon'ble Court may be pleased to appoint an Arbitrator under Section 11 (6) of Arbitration and Conciliation Act, 1996 as per Arbitration Agreement contained in Section XXIII of the Agreement dated 08.09.2021, executed between the Applicant and the Respondent at Exhibit A hereto;"

4. In view thereof, I hereby appoint Mr. Shivam Nimbalkar, Mr. Aditya Kanetkar and Mr. Sagar Kulkarni to act as Arbitrators.

TERMS OF APPOINTMENT

- (a) **Appointment of Arbitrator:** Mr. Shivam Nimbalkar, Mr. Aditya Kanetkar and Mr. Sagar Kulkarni are hereby nominated to act as Arbitrators to decide the disputes and differences between the parties.
- (b) **Communication to Arbitrator of this order:**
- (i) A copy of this order will be communicated to the learned Arbitrators by the Advocates for the Applicant within one week from the date this order is uploaded.
- (ii) The Advocates for the Applicant will forward an ordinary copy of this order to the learned Arbitrators at the following postal and email addresses:

Arbitrator/s 1) Mr. Shivam Nimbalkar

Address Chamber No.68, C Building,
2nd Floor, Gate No.1,
Shivajinagar Court Premises,
Shivajinagar, Pune – 411005

Mobile 9923195682

Email nimbalkar.shivam@gmail.com

2) Mr. Aditya Kanetkar

Address 401/404, Ashayog, CTS
No.2104, FP No.32/A,

Vijaynagar Colony, Sadashiv
Peth, Pune – 411030

Mobile 9822847239

Email advkanetkar@gmail.com

3) Mr. Sagar Kulkarni

Address 39-B, Hanuman Nagar,
Senapati Bapat Road, Pune –
411016.

Mobile 9881235039

Email sagarkulkarni@lexwit.in

- (c) **Disclosure:** The learned Arbitrators are requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Applicant will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Arbitrators on such date and at such place as the learned Arbitrators nominate to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.

- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Arbitrators. The information is to include functional email addresses and mobile numbers.
- (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) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Arbitrators. Any such application will be decided in such manner and within such time as the learned Arbitrators deem fit.
 - (ii) The learned Arbitrators are requested to dispose of all interim applications at the earliest.
- (h) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (i) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrators will be borne by the two sides in equal shares in the first instance.
- (j) **Consent to an extension if thought necessary:** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Arbitrators find it necessary.
- (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Pune.

5. In addition to the affidavit by which the Respondent was duly served with a copy of the present Petition, Learned Counsel for the Petitioner undertakes to file an affidavit of service proving due service of today's date of hearing upon the Respondent.

6. Petition is accordingly disposed of.

(ARIF S. DOCTOR, J.)