

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 165 OF 2024

Shri. Yashwant Govind Sakhare & Anr.

...Petitioners

Vs.

Guardian Promoters and Developers

Private Limited & Ors.

...Respondents

Mr. V. P. Sawant, Senior Advocate i/by Prakash Mahadik for the Petitioners.

CORAM : ARIF S. DOCTOR, J.

DATE : 25TH NOVEMBER, 2024

P.C.:-

1. This is a Petition filed under Section 11 of the Arbitration and Conciliation Act 1996 for appointment of an Arbitrator in respect of the disputes and differences that have arisen between the parties out of a Second Rectification/Addendum Deed dated 4th December, 2020.

2. Mr. Sawant, Learned Senior Counsel for the Petitioners invited my attention to the said Second Rectification/Addendum Deed and pointed out that the same contains arbitration clause i.e. clause 25 thereof. He then invited my attention to the notice invoking arbitration which is dated 10th February, 2024 and pointed out that despite the same having been duly served upon the

Respondents, the Respondents have failed and neglected to respond to the said notice. Mr. Sawant then placed reliance upon an Affidavit of Service to prove service of the present Petition upon the Respondents.

3. I have perused the record and I am satisfied, on the basis of what is stated in the Affidavit of Service, that the Respondents though duly served, have not appeared. Hence, in my view the case for appointment of Arbitrator has been made out.

4. Mr. Sawant points out that the arbitration clause contains provisions for three Arbitrators. He submits that the Petitioners have in their invocation notice named their nominee Arbitrator i.e. Dr. Smt. Justice Shalini Joshi Phansalkar, Former Judge of this Court . Hence, I appoint Smt. Justice R. P. Sondurbaldota, Former Judge of this Court as the nominee Arbitrator of the Respondents on the following terms:-

TERMS OF APPOINTMENT

- (a) Appointment of Arbitrator:** Smt. Justice R. P. Sondurbaldota, Former Judge of this Court is hereby nominated to act as a Sole Arbitrator 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 Sole Arbitrator by the Advocates for the Petitioner within one week from the date this order is uploaded.
- (ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Smt. Justice R. P.
Sondurbaldota, Former Judge
of this Court.

Address Intelmac Machine Tools Pvt.
Ltd., Survey No.100/5,
Ambegaon, Pune – 411 046

Contact 020 39392200

- (c) **Disclosure:** The learned Sole Arbitrator is 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 Petitioner 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 Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates 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 Sole Arbitrator. 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 Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii) The learned Sole Arbitrator is 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 arbitrator 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 Sole Arbitrator find it necessary.
- (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Pune.

5. Both the Learned Arbitrators shall appoint the presiding Arbitrator after consultation amongst themselves.
6. Petition is accordingly disposed of on the aforesaid terms.

(ARIF S. DOCTOR, J.)