

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 1 OF 2024

Nilesh Prabhakar Jambavalikar

...Petitioner

Vs.

Swaraj Kiran Chawade & Ors.

...Respondents

Mr. Dormaan J. Dalal for the Petitioner.

None for the Respondents.

CORAM : ARIF S. DOCTOR, J.

DATE : 9TH SEPTEMBER, 2024

P.C.:-

1. This is a Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

2. Mr. Dalal, Learned Counsel appearing on behalf of the Petitioner points out that the disputes and differences between the parties have arisen out of a Deed of Partnership dated 20th October, 2020. He invited my attention to the arbitration clause contained in the Deed of Partnership which reads thus:-

“37. Disputes & Arbitration.

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

to be appointed by each party to the deference in accordance with and subject to the provision 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."

3. Mr. Dalal points out that the Petitioner had vide a notice dated 21st August, 2023 invoked the arbitration clause and called upon the Respondents to confirm appointment of a Sole Arbitrator, for which purpose, a name has been suggested. He points out that the notice also in the alternative called upon the Respondents to suggest the name of a Sole Arbitrator in the event that the name so suggested was not agreeable. He points out from postal acknowledgments that the notice invoking arbitration was duly delivered upon the Respondents, despite which there was no reply. He then invites my attention to an order dated 18th March, 2024 passed by this Court, in which, this Court had directed notice to be issued on Respondents and permitted hamdast.

4. Mr. Dalal places reliance upon an Affidavit of Service dated 18th April, 2024 to prove service upon the Respondents, despite which, today none has appeared and entered appearance on behalf of the Respondents. He tenders across the bar certain email correspondences from which he points out that the Respondents were not only aware of pendency of the present Petition, but also

both Respondents individually had requested for time on the ground that certain negotiations were taking place between the parties in which they were discussing some financial terms and settlement proposal. It was thus Mr. Dalal submitted that the Respondents though duly served and aware of the pendency of these proceedings, have chosen not to appear before the Court to contest the same.

5. After having heard Learned Counsel for the Petitioner, I am satisfied that the Respondents have been duly served and were aware of the pendency of these proceedings. I am also satisfied that the dispute that has arisen is arbitrable and in any event there is today no one appeared denying the existence of the agreement of the arbitration clause. Hence, I find a case for appointment of an Arbitrator as prayed for has been made out. I accordingly appoint Ms. Aparna Devkar to act as Sole Arbitrator to decide the disputes and differences between the parties.

TERMS OF APPOINTMENT

- (a) Appointment of Arbitrator:** Ms. Aparna Devkar 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 **Ms. Aparna Devkar**

Address Office No.9, 24B Raja Bahadur
Compound, 102, Ground
Floor,SPS Lawyers Chambers,
Ambalal Doshi Marg, Opposite
BSE, Fort, Mumbai 400 001.

Mobile 9423570700

Email aparnadevkar88@gmail.com

- (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.

6. The Petition is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J.)