

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 18 OF 2024

Dhanlaxmi Builders and Developers & Anr. ...Petitioners

Vs.

Anil Oswal & Ors. ...Respondents

AND
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION (L) NO. 13408 OF 2023 (NOB)

Mr. Bhavik Lalan a/w Fatema Tankiwala i/by L J Law for the Petitioners.
Mr. Amey Deshpande for Respondent Nos.1, 3 and 4.

CORAM : ARIF S. DOCTOR, J.

DATE : 25th JUNE, 2024

P.C.:-

1. This order will dispose of both the captioned Petitions.
2. The Commercial Arbitration Petition No.18 of 2024 is filed under Section 11 of the Arbitration and Conciliation Act, 1996 on the appellate side of this Court for appointment of an Arbitrator in respect of disputes and differences arising between the parties from a Memorandum of Understanding which is dated 21st March, 2022. A copy of the said Memorandum of Understanding is appended at Exhibit-A to the Commercial Arbitration Petition No.18 of 2024. The arbitration clause is at page No.37 of the Commercial Arbitration Petition No.18 of 2024, which reads thus:

This order is corrected pursuant to speaking to the minutes order dated 3rd July, 2024.

“(22) All disputes and differences between the parties hereto in connection with this Agreement, including the interpretation of any terms or conditions hereof either during the subsistence of this Agreement or subsequent thereto, shall be referred to arbitration of one Arbitrator, who shall act as the Presiding Arbitrator, whose award shall be a binding on both the parties. The Arbitration shall be governed by the provisions of the Arbitration & Conciliation Act, 1996 or its statutory modifications for the time being in force. The Arbitration shall always be held in Pune and in the English language.”

3. Arbitration was invoked by the Petitioners vide a letter dated 15th May, 2023. In view of the fact that parties have agreed to submit their disputes and differences to arbitration, the Court by consent of the parties appoint Dr. Smt. Justice Shalini Phansalkar-Joshi (Retd.) to act as Sole Arbitrator to determine the disputes and differences between the parties.

TERMS OF APPOINTMENT

- (a) **Appointment of Arbitrator:** Dr. Smt. Justice Shalini Phansalkar-Joshi (Retd.) 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 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 Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Dr. Smt. Justice Shalini

Phansalkar-Joshi (Retd.)

Address Bungalow No.12, Bhagya
Chintamani Society, Opposite
Kachra Depot Paud Road,
Kothrud, Pune – 400411.

Mobile 9657188676

Email phansalkarjoshi@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 Petitioners 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.

This order is corrected pursuant to speaking to the minutes order dated 3rd July, 2024.

- (f) **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 present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.
 - (iii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (h) **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.
- (i) **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.
- (j) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Pune.

4. The Commercial Arbitration Petition (L) No.13408 of 2024 is not on board and is taken on board upon mentioning. The Commercial Arbitration Petition (L) No.13408 of 2024 is filed under Section 9 of the Arbitration and Conciliation Act, 1996 on the original side of this Court. The same shall be treated as Application under Section 17 before the Arbitrator. The further directions for completing pleadings shall be issued by the Tribunal to the parties.

5. Both the captioned Petitions are disposed of in terms of the above order.

(ARIF S. DOCTOR, J.)