

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 150 OF 2022

Solution 1 Interiors (India) Pvt. Ltd.
Through Mr. Sudhakar Shetty

.. Applicant

Versus

Saryu Properties and Hotels Pvt. Ltd.

...Respondent

Mr.Surenkumar B. Sheety, Advocate for Applicant.

None for the Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MAY 10, 2024.

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1. This application has been filed over two years ago on 29th April, 2022. *Vide* an order dated 11th September, 2023, another Learned Single Judge of this Court has already recorded the submission of the Applicant that four Work Orders clearly containing an arbitration clause and the fifth Work Order containing a clause akin to an arbitration clause had been invoked by a notice dated 6th November, 2021 which has been replied to by the Respondent *vide* letter dated 24th November, 2021.

2. On a careful perusal of the record, it is evident that the Work Order dated 14th May, 2019 which dealt with carrying out interior works by the Applicant in a hotel property of the Respondent, has an arbitration clause as contained in paragraph 14(L) thereof, which for felicity is extracted below :

14 (L). All the disputes and differences of any nature arising out of or in connection with this Work Order or carrying out of the Work (whether during the progress of work or after their completion and whether before or after the determination or abandonment or breach of this Work Order) shall so far as possible, be resolved amicably between the Client and the Contractor. If the Parties are unable to resolve their dispute(s) or difference in the manner described herein above, then such disputes shall be resolved through arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 by a single arbitrator appointed by the Client. The parties agree that courts at Mumbai shall have exclusive jurisdiction over this Work Order.

3. An identical provision is contained in the order dated 24th June, 2019. So also in a Work Order dated 5th February, 2020, a cross-reference is made to an earlier Work Order apparently dated 30th August, 2018, which contains an identical arbitration agreement. Learned Counsel for the Applicant submits that the reference to “2018” in the said Work Order is a typographical error inasmuch as the Work Order itself is numbered “19-20/TRH/52/the Residence Hotel”. An amendment to the said Work Order executed on 5th February, 2020 states that all terms and conditions in the Work Order No. 19-20/TRH/52/the Residence Hotel shall govern the purchase effected under that document.

4. On 6th November, 2021, the Applicant invoked arbitration, setting out the grievance outlining the disputes and differences between the parties and effectively invoked arbitration seeking the appointment of an Arbitrator who could deal with all the facts germane to the dispute between the parties. In reply to the said invocation, the Respondent's Advocate has stated that the Respondent too has a counter claim for the loss and damages suffered by the Respondent. It also appears from the said reply that by an earlier notice dated 6th August, 2021, the Applicant had indicated that the Applicant had a right to invoke the Insolvency and Bankruptcy Code, 2016 ("**IBC**") in respect of the amounts due pursuant to the Work Orders. The said reply does not dispute the existence of an arbitration agreement. On the contrary, it asserts the existence of a potential counter claim and also states that unless the threat to invoke the IBC is withdrawn, arbitration cannot commence since it would constitute forum shopping.

5. The Learned Counsel for the Applicant explicitly confirms that no proceedings under the IBC have at all been invoked and the reference to IBC was a reference made by the Applicant as a means that would be available to the Applicant should the dues remained unpaid.

6. In these circumstances, it would be in the fitness of things to refer

the dispute to an Arbitrator pursuant to this Application. It is noted that way back on 11th September, 2023, another learned Single Judge of this Court had kept the matter for final disposal with notice returnable on 10th October, 2023, but the Application is remained pending since then.

7. In the above circumstances, the application is allowed in terms of the following order :

(a) Ms. P.M. Bhansali, an advocate of this Court, is hereby appointed as the Sole Arbitrator to decide the disputes and differences between the parties arising out of and/or in connection with and/or in relation to the relevant Work Orders referred to above.

(b) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today.

(c) The Learned Sole Arbitrator is requested to forward her Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this

Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent.

(d) The parties shall appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication particulars shall be provided by all sides to the learned Sole Arbitration within a period of one week from today. This information shall include a valid and functional email address as well as mobile numbers of the respective Advocates.

(f) The Applicant has agreed that the Sole Arbitrator shall be free to fix his own fees and shall not be bound by the 4th Schedule of the Arbitration Act or the Bombay High Court (Fee payable to Arbitrators) Rules, 2018.

(g) The parties have agreed that all Arbitral costs and fees of the Arbitrator will be borne by the parties equally and will be subject to any final Award that may be passed by the Tribunal.

(h) The parties have agreed that the venue and seat of the arbitration will be in Mumbai.

(i) It shall be open to the Arbitral Tribunal to conduct the proceedings through online mode.

8. The above Section 11 Application is accordingly disposed of.

9. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[**SOMASEKHAR SUNDARESAN, J.**]