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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 69 OF 2023

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Anup Shyam Karnani ...Applicant
Versus
Ambika Brickwell LLP & Ors ...Respondents

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 8172 OF 2024

Anup Shyam Karnani ...Petitioner
Versus
Shammi Kanhiyalal Mamtani ...Respondent

Mr Tushad Cooper, Senior Advocate, with Rishabh Agrawal & Shailesh Korpe, i/b Cygnus Legal, for the Applicant/Petitioner in CARBPL/8172/2024.

Mr Sunil Badsawal, for the Applicant in ARBAP/69/2023.

Mr Ashok B Dhingreja, for Respondent No.1.

CORAM Kamal Khata, J.
DATED: 28th March 2024 & 10th April 2024

PC:-

1. Arbitration Application No. 69 of 2023 is under Section 11 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”). The Commercial Arbitration Petition (L) No. 8172 of 2024 is under Section 9 of the Arbitration Act.

2. The disputes and differences arose under an agreement of Limited Liability Partnership (“**LLP**”) dated 23rd March 2017 and Development Agreement dated 12th July 2017 entered into between the Petitioner and Respondent Nos. 1, 2 and 3 who are partners of Respondent No. 4.

3. For ease of reference below stated is the chart of Respondents (herein after referred to collectively as ‘Respondent-partners’) in the two applications along with the Profit and Losses sharing ratio between the partners as stated on page 3 paragraph 2 of the Petition:

ARBAP/ 69/2023	CARBPL/ 8172/2024	Name of the Partner	Ratio of Profit/Losse s
Petitioner	Petitioner	Mr. Anup Shyam Karnani	65 %
Respondent No. 3	Respondent No. 1	Mr. Shammi Kanhiyalal Mamtani	12.5 %
Respondent No. 4	Respondent No. 2	Mr. Mahendra Ranvir Negi	12.5 %
Respondent No. 5	Respondent No. 3	Mrs. Kanchan Hanumant Dolas	10 %

4. The Petitioner is the owner of the property bearing Gut Nos. 22/1 to 22/7, 15/1, 19/1, 19/2, 24/2 (pt) and 24/1/7 situated at Borpada in Taluka Bhiwandi of Thane District (herein after referred to as the ‘said property’)

5. Ambika Brickwell LLP (“**Ambika**”) the partnership firm is given a limited authority by way of Power of Attorney dated 10th November 2017 for development of the said property i.e., to

construct and sell the premises to the third parties. The Petitioners clarify that the said property is not conveyed to Ambika only the rights to develop the property are given to it. Ambika created a deed of mortgage on various portions of the lands for the project known as Ambika Estates Phase 1. On 11th October 2017 a sanction was obtained for loan amount of Rs. 49.50 crores with interest at the rate of 3.10% above prevalent MCLR of 8% effectively at 11.10% per annum with monthly rests for the construction of the project.

6. The Petitioner has not only brought in the property but also has invested a substantial capital over the years for the project. The Respondents – partners have failed to bring into the partnership contribution as per their profit and loss sharing ratio.

7. The lender – State bank of India (Respondent No. 2) requested Ambika to commence repayment of loan in quarterly instalments in December 2020. The original date for repayment was December 2019 this concession was offered in view of the general slowdown in the real estate market. In the year 2020 in view of the sluggish demand and on account of Covid-19 pandemic Ambika requested for further time. In the year 2021 Ambika requested Respondent No. 2 for additional credit under the Emergency Credit Line Guarantee Scheme (“ECLGS”) introduced by the Government as a part of Atmanirbhar Bharat package to provide relief to borrowers during the Covid-19 pandemic.

8. By deed of rectification dated 8th July 2021 a further charge was created on the property. Whilst the Petitioner has invested both

property and money in the partnership, the partners have admittedly failed to bring in any part of their share. The Respondent – partners have thus got the Petitioner completely invested in the Ambika's project and they have distanced themselves or refrained for the reasons best known to them from even investing their share of contribution in Ambika. It is not the case of the Respondent-partners that they are proposing to terminate the agreement or exit from the partnership. Thus, it is apparent from the conduct of the Respondent-partners that disputes and/or differences have arisen between the parties. These will necessarily have to be referred to arbitration as per terms of LLP agreement and development agreement.

9. On 10th October 2022 the Petitioner sent a notice to the Respondents – partners for invoking arbitration. Since there was no response, another notice dated 14th November 2022 was issued to the Respondents wherein it was pointed out that they had failed to nominate an arbitrator for adjudication of the said dispute.

10. Mr. Cooper for the Petitioner contends that the borrowers have instituted proceedings against Ambika. Therefore, the only party who is presently prejudiced in this entire matter is the Petitioner who has invested in Ambika.

11. In view of this conduct of the partners the Petitioner was constrained to file an Arbitration Application No. 69 of 2023 on 9th December 2022 for appointment of sole arbitrator. He thus submits

that the Arbitrator be appointed. He also has no objection to the application under section 9 being referred to Arbitration.

12. I have heard all the Advocates. I have also perused the papers placed on record.

13. The Petitions were served on the Respondents in August 2023. The Respondent-partners were therefore aware about the contentions raised by the Petitioners. The Respondent-partners have been afforded sufficient opportunities since August 2023. The partners have failed to file any reply.

14. It would be pertinent to note the events that transpired since the Petitions under section 9 and 11 of the Arbitration Act were filed. On 7th August 2023 Respondent Nos. 2 and 5 sought time. Respondent No. 4 thought served by an email and had failed to remain present thus the matter was adjourned. Then on 18th December 2023 the Advocates for Respondents Nos. 2 and 5 were granted time to file their reply affidavit. Respondent No. 4 continued to remain absent. On 22nd January 2024 and on 26th February 2024 the Respondents once again sought time to file their reply.

15. The matter then came up on 27th March 2024 when both Respondents' Advocates requested that the same be adjourned to the next day namely, 28th March 2024 as the 2nd Respondent's Advocate had no papers. The matter was taken up on 28th March 2024. Even today, the 2nd Respondent's Advocate had no explanation for not filing an affidavit in reply although time was

sought. He submitted that according to him the Petition was premature as there were no disputes and thus there was no question of appointment of an arbitrator.

16. The 5th Respondent's Advocate also contended that there were no disputes between the parties. The Advocate for Respondent No. 5 however pointed out that as per clause 14 of the LLP agreement dated 23rd March 2017 the Petitioner had failed to call meetings either by sending three days prior notice on the residential address or by emails provided by the partners. He pointed out that there was also an option for calling for a meeting at shorter notice if the majority of the designated partners would agree. He submitted that it was not done. He submitted that not only physical meetings were not called for or held but an option for conducting meetings through telephonic conference also was not invoked by the Petitioners, he therefore said that there as apparently no dispute. He further contended that the 5th Respondent was not called upon to bring in any monies in Ambika.

17. It is evident from the record that neither have the Respondent-partners responded to the Petitioner's Advocate's notices invoking arbitration and raising claims nor have they filed a reply to these two Petitions.

18. It is thus amply clear that the Respondent-partners have sat back and reveled in the mischief having beguiled the Petitioner to proceed with the project. In this manner the Respondent-partners by their sheer inaction have placed the Petitioner in a precarious

position with regard to the banks and the project that Ambika had undertaken.

19. It is not the case of the partners that they have invested or taken any steps towards the implementation and smooth completion of the project. There is not an iota of evidence or document even attempted to be shown that the partners have or had invested even to the extent of their capital as per their ratio under the LLP. None of the Respondent-partners have been able to even show any amount whatsoever they have invested in the Ambika since it was formed.

20. Upon perusal of clause 4.16 of the Development Agreement annexed at page 42 and under clause 21 of the LLP Agreement dated 23rd March 2017 at page 22 of the Petition the Arbitrator can be appointed. With a view to give a fair opportunity to the Respondent-partners the section 9 is also referred to the Arbitrator.

21. In view of above, I pass the following order:

- (a) I hereby nominate Mr Justice Akil Kureshi (Former Chief Justice of Rajasthan High Court). He shall adjudicate the disputes between the parties that are subject matter of the present Application.
- (b) The Arbitrator is requested to file his disclosure statement, as per Section 11(8) under section 12(1) of the Arbitration Act, within four weeks with the

Prothonotary and Senior Master and provide copies to the parties.

- (c) Parties to appear before the Sole Arbitrator on a date to be fixed by him at his earliest convenience.
- (d) The arbitral tribunal's fees shall be governed by the Fourth Schedule under the Arbitration and Conciliation Act, 1996.
- (e) All the four parties shall bear the cost of the Arbitration equally.
- (f) Application under Section 9 of the Arbitration Act shall be taken up as application under Section 17 by the Arbitrator and disposed of at the earliest convenience.

22. The order passed under Section 9 on 11th March 2024 to be continued for a period of 12 weeks from today.

23. The office to notify the Arbitrator of his appointment including via email.

24. The Petition under Section 9 and the Application under Section 11 are disposed of in the above terms. No order as to costs.

(Kamal Khata, J)