

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPLICATION NO.114 OF 2024

Manish Sheth ...Applicant

Versus

Ketan Shah ...Respondent

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 11848 OF 2023

Manish Sheth ...Petitioner

Versus

Ketan Shah ...Respondent

WITH

COMMERCIAL ARBITRATION PETITION (L) NO. 14445 OF 2023

Ketan Shah ...Petitioner

Versus

Manish Sheth ...Respondent

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Mr Anoshak Daver, with Siddharth Kakka & Nishit Tanna, for the
Petitioner.

Mr Ajai Fernandes, with Gautam Tiwari, i/b Tasneem Khatau, for the
Respondent and the Petitioner in CARBPL/14445/2023.

CORAM. ARIF S. DOCTOR, J
DATED: 30th August 2024

PC:-

1. The captioned Commercial Arbitration Application is filed under Section 11 of the Arbitration and Conciliation Act 1996 (“**Arbitration Act**”) and seeks the appointment of an Arbitrator in respect of the disputes and differences which have arisen between the parties out of a Limited Liability Partnership Agreement (“**LLP Agreement**”) dated 15th September 2016.

2. Mr. Daver, Learned Counsel appearing on behalf of the Applicant invites my attention to the LLP Agreement and points out that the same is duly executed by the Parties and contains an arbitration clause. He then invites my attention to the notice dated 14th February 2020, by which the Respondent invoked arbitration (“notice invoking arbitration”). He points out that the Respondent has not responded to the said notice, and it was thus that the Applicant was compelled to file the present Application.

3. Mr. Fernandes Learned Counsel appearing on behalf of the Respondent neither disputed nor denied the LLP Agreement or the that arbitration had been invoked by the Applicant under the said

Agreement. His only contention to oppose the present Application was that the Applicant had not in the notice invoking arbitration named an arbitrator. Thus, he submitted that the notice invoking arbitration was not in conformity with Section 11(4) of the Arbitration Act. This was the sole ground on which the Application was opposed.

4. Mr. Davar learned counsel appearing on behalf of the Applicant pointed out that Section 11(4) states the procedure wherein party fails to appoint an arbitrator within thirty days from the receipt of the request to do so from the other party. He then submitted that arbitration was to be invoked as per the terms of the arbitration clause contained in the LLP Agreement which he pointed out did not name an arbitrator. It was thus he submitted that the Respondent's contention that the invocation was bad since no arbitrator was named in the notice was entirely untenable. He submitted that there was no provision in the Arbitration Act which required the party invoking arbitration in all cases to name an arbitrator in the notice invoking arbitration.

5. After hearing Learned Counsel for the parties, I have no hesitation in allowing the Application for the following reasons, viz.

A. Notice of invocation of arbitration is under the provisions of

Section 21 of the Arbitration Act and not Section 11. A plain reading of Section 21 makes it clear that a notice invoking arbitration must make a request for a dispute to be referred to arbitration and there is no requirement in Section 21 for naming an arbitrator at the stage of invocation. Therefore, the key ingredient for the notice invoking arbitration to be valid is that the same must indicate the clear expression of intent to resolve the dispute through arbitration. i.e., the intention to arbitrate with regard to a dispute that has arisen and nothing more. This Court in the case of ***Veena Wd/O Naresh Sheth and another vs Seth Industries Ltd. Mumbai and Others¹*** has in the context of Section 21 of the Arbitration Act noted that a notice indicating disputes or that disputes have arisen and invoking the arbitration clause is sufficient, *unless the arbitration agreement itself requires the invocation to be in particular manner.*

B. In the facts of the present case, admittedly the arbitration clause in question does not provide for the procedure for appointment of an arbitrator as more particularly dealt with

¹ 2010 SCC OnLine Bom 1707

in Section 11(2) of the Arbitration Act. Thus, what would apply in the facts of the present case is Section 11(5) of the Arbitration Act and not Section 11(4) as contented by Learned Counsel for the Respondent. A plain reading of Section 11(4) makes clear that the same would apply only in the context of an arbitration with three arbitrators as more specifically provided in Section 11(3) of the Arbitration Act which is admittedly not what the present arbitration clause contemplates. Hence, reliance upon by Learned Counsel for the Respondent upon Section 11(4) of the Arbitration Act is not only misconceived but is also legally untenable. As per Section 11(5) if the parties within 30 days from invocation fail to agree upon the name of an arbitrator, the Party who has invoked arbitration can apply to the Court under Section 11(6). Thus, the invocation of arbitration and the agreement upon the name of an arbitrator are both separate and distinct. While an invocation notice may as a matter of convenience contain the name of a proposed arbitrator, the absence of such name would not render the notice invalid.

C. Crucially, in the facts of this case the Respondent has not even responded to the notice invoking arbitration nor has the

Respondent denied the validity/existence of the Arbitration Agreement. Infact the Respondent admits that the Applicant is a partner of the LLP and is entitled to a share. Thus, the 30 days period prescribed under Section 11(5) having lapsed the Applicant is well entitled to file the present Application under Section 11(6) for appointment of an arbitrator.

6. Hence for the aforesaid reasons I find absolutely no merit in the Respondent's contentions. I therefore appoint Mr. Justice Ramesh D. Dhanuka, Former Chief Justice of High Court of Bombay to act as the Sole Arbitrator to resolve the disputes and differences between the parties on the following Terms and Conditions.

TERMS OF APPOINTMENT

- (a) Appointment of Arbitrator:** Mr. Justice Ramesh D. Dhanuka, Former Chief Justice of High Court of Bombay, 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 **Mr. Justice Ramesh D. Dhanuka,**
Former Chief Justice of High Court of Bombay.

Address c/o Mr Chirag Shah, Advocate,
 11B, Nirmal Building, 11th
 Floor, Vidhan Bhawan Marg,
 Nariman Point,
 Mumbai 400 021.

Mobile 022-69040000

Email rddhanuka5@yahoo.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 printout 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 regarding 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) **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 Mumbai.

7. The captioned Commercial Arbitration Application and Petitions are disposed of in the above terms.

(ARIF S. DOCTOR, J)