

Digitally signed
by MULEY
SHUBHAM
PRAVINRAO
Date:
2024.07.31
18:30:26
+0530

MULEY
SHUBHAM
PRAVINRAO

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 138 OF 2024

Lodha Management LLP

...Petitioner

Vs.

Fineworthy Software Solutions Limited

...Respondent

WITH
INTERIM APPLICATION (L) NO. 16045 OF 2024
WITH
COMMERCIAL ARBITRATION APPLICATION NO. 25 OF 2024

Mr. Aspi Chinoy, Senior Advocate a/w Sharan Jagtiani, Senior Advocate, Parimal Shroff, D. V. Deokar and Sachin Pandey i/by M/s. Parimal K. Shroff & Co. for the Petitioner.

Mr. Ashish Kamat, Senior Advocate a/w Jehaan Mehta and Jigisha Vadodaria i/by Negandhi Shah & Himayatullah for the Respondent.

CORAM : ARIF S. DOCTOR, J.

DATE : 23rd JULY, 2024

P.C.:-

1. The disputes and differences between parties arise out of the Term Sheet dated 3rd February, 2023. Parties do not dispute the agreement and the arbitration clause. Hence, parties have by consent agreed that the present Section

This order is corrected pursuant to speaking to the minutes order dated 29th July, 2024.

9 Petition could be converted to a Section 17 Petition and heard before a Learned Arbitrator. Parties consent to the appointment of Mr. Justice G. S. Patel (Retd.) to act as the Sole Arbitrator in the disputes and differences that have been arisen between the parties in respect of the said Term Sheet. I thus appoint Mr. Justice G. S. Patel (Retd.) to act as Sole Arbitrator on the following terms.

TERMS OF APPOINTMENT

- (a) **Appointment of Arbitrator:** Mr. Justice G. S. Patel (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 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 Mr. Justice G. S. Patel (Retd.)

Address 11 Maker Chambers VI 220
Jamnalal Bajaj Marg, Nariman
Point, Mumbai 400021.

Mobile 9821088711

Email gautam@gautampatel.com

This order is corrected pursuant to speaking to the minutes order dated 29th July, 2024.

- (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.
- (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.

This order is corrected pursuant to speaking to the minutes order dated 29th July, 2024.

- (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.
- (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.

2. Since this is an appointment by consent, it is made clear that the schedule of fees applicable shall not apply. I am informed that the pleadings are complete. Hence, the Commercial Arbitration Petition is disposed of in the aforesaid terms.

3. In view of the above order, nothing survives in the Section 11 Commercial Arbitration Application No.25 of 2024 and Interim Application (L) No.16045 of 2024 and the same are accordingly disposed of. The statement

This order is corrected pursuant to speaking to the minutes order dated 29th July, 2024.

made by Learned Senior Counsel for the Respondent as recorded in the order dated 19th December, 2023 continue to operate till disposal of the Application under Section 17 of the Arbitration and Conciliation Act, 1996 before the Arbitral Tribunal. Needless to state that this order is passed without prejudice to all rights and contentions of both sides including the Respondent's contention as to jurisdiction and maintainability.

4. An Intervention Application has also been filed on behalf of the Cooperating Housing Society. I don't see how that Application will lie in the present facts, hence, the Intervention Application is dismissed.

5. Office to take on record a copy of the Affidavit-in-Reply filed by the Respondents.

(ARIF S. DOCTOR, J.)

This order is corrected pursuant to speaking to the minutes order dated 29th July, 2024.