

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 339 OF 2024

Hitesh Randhir Sayta & Anr.

...Petitioners

Vs.

Dinesh Bhanushali & Ors.

...Respondents

WITH
COMMERCIAL ARBITRATION APPLICATION NO. 161 OF 2024

Mr. Rubin Vakil a/w Rishit Vimadalal, Manish Doshi, Heena and Gunjan
Doiphode i/by Vimadalal & Co. for the Petitioners.

CORAM : ARIF S. DOCTOR, J.

DATE : 9TH OCTOBER, 2024

P.C.-

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 and arises out of a Memorandum of Understanding dated 29th January, 2019 executed between the parties. The Respondents have been served.

2. Learned Counsel for the Petitioners submits that this Court had on 18th July, 2023 in Commercial Arbitration Petition No.339 of 2024 granted interim relief and directed the Petitioners to serve a copy of the said order upon Respondents. Learned Counsel places reliance upon an Affidavit of Service to prove compliance with the said order. He today invites my attention to the

Memorandum of Understanding and points out that the same contains an arbitration clause being clause No.7. He further submits that since disputes and differences had arisen between the parties, the Petitioners had vide their notice dated 14th September, 2022 invoked arbitration in terms of the said Memorandum of Understanding against the Respondents. He submits the same has not been responded to and thus the present Petition has been filed after the statutory period provided for.

3. Having heard Learned Counsel for the Petitioner and having perused the contents of the Section 11 Petition, I am satisfied that there exists an arbitration agreement between the parties and that the same has been duly invoked. Furthermore, the Respondents have at no stage appeared though served. The Respondents have not responded to the invocation notice or disputed or denied any averments in the present Petition. Thus I find that sufficient cause has been shown for appointment of an Arbitrator. Petition is allowed in terms of prayer clause (a) which reads thus:-

“(a) That pending the arbitration proceedings and the enforcement of the arbitral Award, this Hon’ble Court be pleased to pass an order directing the Respondents to deposit in this Hon’ble Court, a sum of Rs.1,22,50,000/- along with interest at the rate of 18% per annum from 29th January 2019 till date, as per the Particulars of Claim (Exhibit O hereto);”

4. Hence, this Court appoints Mr. Vishal Raman, Advocate of this Court to act as an Arbitrator in respect of the disputes and differences between the parties.

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr. Vishal Raman, 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 Mr. Vishal Raman.

Address C/o. Mr. Simil Purohit, Senior Counsel 504, 505, 5th Floor, Gundeecha Chambers, Fort, Mumbai 400001.

Mobile 9773430457

Email vishalpattabiraman@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.
- (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.

5. The captioned Petition and the Application are both disposed of in these terms. No costs.

6. Ad interim order dated 18th July, 2023 shall continue to operate until the disposal of Section 17 application before the learned Arbitrator.

(ARIF S. DOCTOR, J.)