

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 162 OF 2024

Smartphone Technology Private Limited ...Applicant

Versus

Goyal Achal Sampatti Vikas And Niyojan Nigam ...Respondent
Limited

**Ms Siddhi Somani, with Lalit Munshi, i/b Samvad Partners for the
Applicant.**

SHEPHALI
SANJAY
MORMARE

Digitally signed by
SHEPHALI SANJAY
MORMARE
Date: 2024.10.11
17:36:05 +0530

CORAM. ARIF S. DOCTOR, J
DATED: 10th October 2024

PC:-

1. The present Arbitration Application is filed under Section 11 of the Arbitration and Conciliation Act 1996 and arises out of Assignment of Receivable Agreement dated 24th March 2022 and pointed out that the same contains an arbitration clause in Clause 7.5 which titles ‘Governing Law and Jurisdiction’. Clause of the said clause provides for arbitration of a Sole Arbitrator within five days’ of invocation of the said clause.

2. Ms Somani, Learned Counsel appearing on behalf of the Applicant then invited my attention to the invocation notice dated 4th January 2024 by which the Petitioner has invoked arbitration and

nominated the Sole Arbitrator. The Respondents though served with the said notice had not responded. She pointed out that prior to the issuance of said legal notice a Demand Notice was issued on 19th December 2023, to which also there was no response.

3. Ms Somani placed reliance on an Affidavit of Service by which the Respondent has been served, despite which none has entered appearance on behalf of the Respondent.

4. Hence, I see no reason why I should not appoint an Arbitrator as prayed for, since I am prima facie satisfied that there is an agreement between the parties, which contains arbitration clause. Hence, the Arbitration Application is allowed in terms of prayer clause (a), which reads thus:

(a) This Hon'ble Court be pleased to appoint a sole arbitrator to constitute the arbitral tribunal, for adjudication of all claims, disputes and differences arising out of Applicant's invocation Notice dated 4th January 2024, in terms of the arbitration agreement between the parties contained in Clause 7.5 (b) of the Agreement dated 24th March 2022."

5. Hence, I appoint Mr Hormaz C Daruwalla, Senior Advocate to act as the Sole Arbitrator to decide the disputes and differences between the parties on the following Terms and Conditions:

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator: Mr Hormaz C Daruwalla, Senior Advocate, 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 Hormaz C Daruwalla,**
Senior Advocate

Address Behramji Mansion, 3rd Floor,
Sir Pherozshaw Meha Road,
Mumbai 400 001.

Mobile 022-65075098
9820004743

Email hormaz@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 Applicant 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 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.

6. The Arbitration Application is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J)