

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO. 95 OF 2024

Yash Dhanpatraj Bhansali & Arn.

...Applicants

Vs.

Ashwin Bhansilal Shah & Anr.

...Respondents

Mr. Vishal Kanade a/w Vyom Shah, Anagh Pradhan and Palak Jain i/by Divya Shah Associates for the Applicants.

Mr. Nishant Sasidharan a/w Bhanu Chopra and Danovy Creado i/by Trupti Shetty for the Respondents.

CORAM : ARIF S. DOCTOR, J.

DATE : 12TH SEPTEMBER, 2024

P.C.:-

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996. The application was resisted on the ground that the claims sought to be made in arbitration were dead wood i.e. barred by limitation.

2. After the matter was argued at some length, it was put to Learned Counsel appearing on behalf of the Respondents as to whether his clients would be willing to submit their disputes and differences to arbitration if the Tribunal was permitted to take up and consider this issue expeditiously.

3. Learned Counsel for the Respondents, on taking instructions, very fairly submitted that his clients would be willing to appoint an Arbitrator who

would then consider the issue as to whether the claims sought to be raised in arbitration were barred by limitation in an application which would be filed under Section 16 of the Arbitration Act.

4. Hence, I deem it fit to appoint Mr. Justice Akil Kureshi (Former Chief Justice of Rajasthan High Court) to act as an Arbitrator on the following terms:-

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr. Justice Akil Kureshi (Former Chief Justice of Rajasthan High Court) 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. Justice Akil Kureshi
(Former Chief Justice of
Rajasthan High Court).

Address 617, Raheja Chambers, 6th
Floor, Free Press Journal Marg,

213 Nariman Point, Mumbai –
400021.

Mobile 9408481511

- (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) **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.

- (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
 - (h) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
 - (i) **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.
 - (j) **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.
 - (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.
5. The Tribunal is requested to expeditiously hear and dispose of the application under Section 16 as and when filed.
6. The Commercial Arbitration Application is accordingly disposed of.

(ARIF S. DOCTOR, J.)