



IN THE HIGH COURT OF BOMBAY AT GOA

APPLN. FOR APPOINTMENT OF ARBITRATOR NO. 11 OF 2024

MAYURESH C. GAWAS ... APPLICANT
VS
NKB EXPRESS PVT. LTD. REP. BY ITS
DIRECTOR SURAJ SHIVAJI SINGH ... RESPONDENT

Mr. Bhargav Khandeparkar, Advocate for the Applicant.

CORAM:- VALMIKI MENEZES, J.

DATED :- 24th January, 2025

P.C.:

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1984(the Act) for appointment of an Arbitrator under an Agreement dated 28/03/2023 between the Applicant and the Respondent. An arbitral clause exists at clause 7.2 by which the parties agreed that dispute which may arise between them shall be referred to a sole arbitrator, and the venue of such arbitration shall be at Goa only. It is alleged in the application that on disputes having arisen between the parties, the arbitral clause was invoked in terms of Section 16 of the Act by and notice dated 14/03/2024 invoking the arbitral cause was issued to the Respondent stating therein about the disputes and claims raised by the Applicant against the Respondent. A notice was served on the Respondent and as proof of such service, a tracking report is has been produced where it is recorded that the notice was served on 16/03/2024.

2. Since there was no reply from the Respondent, nor did the Respondent agree to a common Arbitrator to be appointed in terms of clause 7.2 of the Agreement, the present application was filed. Notice was issued to the Respondent in various forms. The Respondent has been served through Registered Post AD on 08/01/2025, and as proof of service, the Applicant has produced a tracking report as also the acknowledgment card which is duly signed. In addition, the Respondent who is a registered private limited company has also been served on its official e-mail ID which appears at page 24 (“Notices and correspondence” clause of the Agreement) specified as nkbexpresspvtltd@gmail.com

Notice was also sent through the Bailiff of the concerned Court i.e. the Civil Court of Ponda where a report has been returned stating that the brother of the Director of the Respondent company i.e. one Vikas Singh has refused to take the service for one Suraj Singh. Nevertheless, the Respondent has been served through at least two other modes and has not put in any appearance nor on previous dates when the case was listed. The record also reveals that on previous occasions the Respondent company was represented by an Advocate who was discharged vide order dated 29/11/2024 passed by the Registrar of this Court and since then, no appearance has been put in by the Respondent, though served with the notice through their Advocate who appeared for them.

3. On going through the arbitral clause, I am satisfied that the arbitration clause is valid between the parties (clause No.7.2). The

clause reads thus:

“7.2 Arbitration

If during the period of AGREEMENT any dispute arises between the parties concerned such dispute shall be referred for arbitration. The arbitrator shall be appointed as per Arbitration and Reconciliation Act 1996 by both the parties i.e. the CHARTERER/CONTRACTOR and OWNER. The venue of arbitration shall be Goa only”

4. Considering that the Respondent has been given several opportunities to appear and propose the name of an Arbitrator but has not availed the said opportunities, I proceed to pass the following order:

A. Shri Justice N.A. Britto, retired Judge of the Bombay High Court is appointed as the Sole Arbitrator to decide upon the disputes and differences between the Applicant and the Respondent on 14/03/2024 arising out of and/or in connection with and/or in relation to the Agreement dated 28/03/2023.

B. A copy of this order will be communicated to the learned Sole Arbitrator by the Advocate for the Applicant within a period of one week from today.

C. The learned Sole Arbitrator is requested to forward his Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the

Advocate for the Applicant so as to enable him to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent.

D. The parties shall appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

E. Contact and communication particulars shall be provided by both sides to the learned Sole Arbitrator within a period of one week from today. This information shall include a valid and functional email address as well as the mobile numbers of the respective Advocates.

F. The Sole Arbitrator shall charge his fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee payable to Arbitrators) Rules, 2018. All the arbitral costs and the fees of the Arbitrator will be borne by the Applicant and the Respondent equally and will be subject to the final Award that may be passed by the Tribunal.

G. Under the Agreement, the parties had agreed that the seat of the arbitration will be at Goa. Hence, the arbitration shall be in Panaji, Goa, and the venue shall be as per the directions of the arbitrator.

5. The Application is disposed of in the aforesaid terms. There shall be no order as to costs.

VALMIKI MENEZES, J.