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IN THE HIGH COURT OF BOMBAY AT GOA
APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO.2 OF 2025

FLEMINGO DUTYFREE SHOP
PRIVATE LIMITED, a company
Incorporated under the Companies
Act, 1956 and an existing company
Under the Companies Act, 2013,
Having its registered office at
D-73/1, TTC Industrial Area,
Turbhe, MIDC, Navi Mumbai
400 703 and administrative
Office at 14/1, Masha Allah, Upper
Orchard Lane, Zuwari Nagar, near
MES College, Vasco-Goa.

... APPLICANT

Versus

AIRPORTS AUTHORITY OF
INDIA, having its Corporate
Headquarters at Rajiv Gandhi
Bhavan, New Delhi 110 003,
Through its Airport Director,
Goa International Airport,
Having his office at Goa

International Airport,
Dabolim, Goa 403 801.

... RESPONDENT

Ms Snigdha Mankar with Ms Kalpa Govekar, Advocates for the Applicant.

Ms Divyashree Shabhag, Advocate for the Respondent.

CORAM: VALMIKI MENEZES, J.

DATED: 1ST APRIL 2025

P.C.:

1. The above Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) seeking the appointment of a new Sole Arbitrator under Sections 15(2) and 14(1)(a) of the Arbitration and Conciliation Act, 1996, considering the termination of the mandate of the previous arbitrator by expiry of the statutory period prescribed under Section 29A(1) read with Section 29A(3).

2. The Applicant and the Respondent had entered into a Concession Agreement dated 14.03.2016. A dispute covered by the Arbitration Clause under the said Agreement arose between the parties, as a result of which, a notice invoking arbitration in terms with Article 22.2 of the Concession Agreement for appointment of an arbitrator was issued by the Applicant on 18.07.2020. Consequently, Mr. Alok Kumar Misra,

Retd. CMD, Bank of India was appointed as the Sole Arbitrator vide letter of appointment dated 09.02.2021 by consent of both parties.

3. By operation of section 29A of the Act, the Sole Arbitrator was required to pass the award within the timeline prescribed thereunder which, in this case, was to be by 09.02.2023. However, owing to the failure of the Sole Arbitrator to conclude the arbitration proceedings before the stipulated date, his mandate stood terminated by the operation of law. Although the mandate of the Sole Arbitrator stood terminated, the arbitration proceedings between the parties continued to subsist.

4. Consequently, the Applicant vide letter dated 07.08.2024 addressed to the respondent, sought the appointment of a new arbitrator. The Respondent did not respond to the said notice. Hence the present application is filed. On notice being issued to the respondent appearance was put in by the respondent through its advocate Ms. Divyashree Shanbhag.

5. Heard Ms Snigdha Mankar for the applicant and Ms. Divyashree Shanbhag, for the Respondent. Ms. Divyashree Shanbhag for the respondent, on instructions, submits that the respondent has no objection to the appointment of a new Sole Arbitrator to adjudicate the pending arbitration proceedings between the parties. It is further submitted that the parties have consented to the appointment of Shri Subodh Kantak, Senior Advocate, from Panaji-Goa to be appointed as

the new arbitrator, to continue the arbitral proceedings, from the stage where the proceedings had reached. The learned advocates submit that they have taken consent from Senior Advocate Subodh Kantak, to act as the Sole Arbitrator to decide the disputes between the parties.

6. In these circumstances, the following order is passed :-

- (A) Senior Advocate Shri Subodh Kantak, is appointed as the Sole Arbitrator to decide upon the disputes and differences between the Applicant and the Respondent arising out of and/or in connection with and/or in relation to the Concession Agreement dated 14.03.2016.
- (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 the proceedings. 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) The parties have agreed that the seat of the arbitration will be in Panaji, Goa, and the venue shall be as per the directions of the arbitrator.

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

8. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by email of a digitally signed copy of this order.

VALMIKI MENEZES, J.