
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 198 OF 2024

M/s. Ochre & Black Pvt. Ltd.

...Petitioner

Versus

IV Enterprises & Ors

...Respondents

Mr. Nikhil Kumar R., for the Petitioner.

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : JANUARY 13, 2025

PC :

1. This is a Petition under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) seeking appointment of an arbitrator in connection with disputes and differences between the parties arising out of a Franchise Agreement dated April 20, 2016.

2. On the last occasion, *prima facie* it had been confirmed that an arbitration agreement exists in connection with the Franchise Agreement between the parties. It was recorded in the order dated January 6, 2025 that the arbitration had been invoked way back on October 7, 2023, suggesting the name of an arbitrator, to which the Respondents replied, without denying the existence of the arbitration

agreement, but wrongly characterizing the invocation as a unilateral appointment. It was made clear on the last occasion that there being no dispute about the existence of an arbitration agreement, final orders would be passed today. Learned Counsel for the Petitioner has filed the service affidavit dated January 13, 2025, by which it is apparent that Respondent No.1 has refused service. Respondent No.2 has been duly served. The Respondent No.3 is shown as not being located.

3. In these circumstances, on a satisfactory attempt having been made to serve the Respondents, and an agreement to arbitrate evidently being in existence, I see no reason to hold up this Application on the docket of this Court. In these circumstances, the following order is passed:-

- a) Mr. Rohan Kelkar, an Advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;
- b) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and

communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

- c) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996 to the Advocates for the Applicant so as to enable them 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 Respondent;
- d) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;
- e) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance,

and shall be subject to any final Award that may be passed by the Tribunal in relation to costs; and

- f) The parties have agreed that the venue and seat of the arbitration will be in Mumbai. It is clarified that it shall be open to the Arbitral Tribunal to conduct the proceedings online through electronic mode.

4. This Application is ***finally disposed of*** in the aforesaid terms.

5. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]