
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 252 OF
2024**

Ashish Tripathi ...Applicant

Versus

Jocata Financial Advisory & Technology Pvt Ltd. ...Respondent

Mr. Akhil Gurwada, *for the Applicant.*

Mr. Ameya Gokhale, *a/w Rishabh Jaisani, Harit Lakhani, i/b
Shardul Amarchand, Mangaldas & Co., for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 28, 2025

PC :

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under a Engagement Letter dated May 3, 2016. The arbitration agreement is contained Clause found at Page 38 of the Application. In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. It is apparent from the record that the arbitration agreement was invoked by the Applicant on August 10, 2022. There is a reply dated September 10, 2022 filed to the said invocation.

3. There is a serious objection to referral of disputes to arbitration. The primary grievance is that this is a second bite at the cherry on the part of the Applicant, considering that the arbitrator had already been appointed in the past, and in those proceedings, liberty was sought to raise certain issues in a fresh arbitration proceeding. The arbitral tribunal ruled that the tribunal does not have an authority or a mandate to grant liberty of that nature, and consequently, within a week of such request the arbitration proceedings were terminated. While the mandate was still alive, this Application came to be filed way back in 2022, and is still pending for the last three years.

4. In these circumstances, considering the efflux of time in the matter, and taking into account the prayer, namely, to appoint the very same arbitrator to adjudicate the purported new disputes, without commenting on the merits, the Application can be finally disposed of by appointing the same arbitrator, who would be best placed to examine if the contentions of the Respondent are valid.

5. The Learned Sole Arbitrator Ms. Ayesha Damania is hereby appointed as an arbitration. Given the peculiar nature and circumstances of the facts at hand, the arbitrator will decide as a preliminary issue, the objection raised by the Respondent as an Application under Section 16 of the Act. Should the arbitrator find that the disputes are within the jurisdiction, the arbitrator may proceed to issue such directions as the arbitral tribunal deems fit.

6. With the aforesaid directions, the Application is ***finally disposed of*** with no comment made on the merits of the matter, and in terms of the following order :-

- a) Ms. Ayesha Damania, 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 the date on which this order is uploaded on the website of this Court. The Petitioner/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 Act to the parties within a period of two weeks from receipt of a copy of this Order;
- 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.

7. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

8. Considering the statement that this should not constitute an extension of a mandate under Section 29-A of the Act, liberty to file an Application under Section 29-A, should the Applicant be advised to do so. The reference being made at this stage is in any case a reference made in disposal of this Application.

9. 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.]