

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.139 OF 2024

Suresh Nemchand Saraf & Anr. ...Applicants

Versus

Roha Dye Chem Private Limited & Ors. ...Respondents

Mr. Akash Rebello a/w. *Mr. Pratik Pawar, Shanaya Cyrus Irani & Jatin Asrani i/b. M/s. J. Sagar Associates, Advocate for Applicants.*

Ms Rima Desai a/w. *Krushika N. Barfiwala & Divyanshu Gupta i/b. Parinam Law Associates, Advocate for Respondent Nos.1 & 2.*

Ms Savita Mundra, *Advocate for Respondent No.3.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 08, 2025

PC :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (*“the Act”*) seeking reference of disputes and differences between the parties in connection with the Share Purchase Agreement (*“SPA”*) dated October 5, 2022, between the Applicants (who are sellers) and Respondent No.1 (who is a buyer) and Respondent No.2 which is the company whose shares are the subject matter of purchase under the Agreement.

2. Respondent No.3 is the Escrow Agent holding retention monies in terms of the SPA, the release of which would be governed by the Escrow Account Agreement dated November 1, 2022.

3. Evidently, the SPA contains an arbitration agreement in Clause 15, which is found on Page 100 of the Application. In the interest of brevity, the same is not being extracted. Suffice it to say the arbitration agreement squarely falls under the jurisdiction of this Court. Clause 15.4 of the SPA enables reference of the unresolved disputes to resolution before arbitration – such resolution being an attempt to amicably resolve the dispute for a period of 30 days after the dispute has arisen. The Petitioner wrote to the Respondent on September 12, 2023, drawing attention to the SPA and the Escrow Agreement, and stating that the disputes and differences had arisen, and called for resolving the grievances within a period of thirty days. Thereafter, on November 10, 2023, the Petitioner again wrote to the Respondent, specifically this time, invoking arbitration and suggesting the name of a retired Judge of this Court as the arbitrator. In this document, the Petitioner recorded that since resolution had not been achieved within the stipulated (30-day) period, the Petitioner was invoking arbitration in terms of Clause 15.4 of the SPA.

4. It is seen from the affidavit-in-reply dated May 1, 2024 filed on behalf of Respondent Nos. 1 and 2 that there is indeed a statement, on oath, that the disputes between the parties must be consolidated and referred to arbitration. This position has been articulated because it is the case of Respondent Nos.1 and 2 that they have a counter-claim against the Applicants.

5. Consequently, it is evident from the record that not only is there an arbitration agreement in existence, but also the parties are clear that disputes and differences exist between them, for them to be resolved in terms of the arbitration.

6. Today, when the matter is called out, Learned Counsel for the Respondents submits that the primary objection to reference of these disputes to arbitration is the fact that the disputes resolution provision under the SPA alone has been invoked, although the subject matter at start of the invocation letter refers to both the SPA and the Escrow Agreement. The paragraph in that letter invoking arbitration only refers to Clause 15.4 of the SPA. Consequently, her contention is that there cannot be an invocation of a dispute, by this letter in connection with the Escrow Agreement.

7. Having reviewed the record, it is apparent that escrow arrangement is incidental to the SPA. The Escrow Agent was meant to

hold on to retention monies, which were to be released in terms of the bargain contracted by the parties under the SPA. If the disputes between the parties under the SPA were to be resolved one way or the other, to the extent the disputes relate to retention monies, the Escrow Agent would have to obey the outcome in those proceedings.

8. Consequently, the objection in connection with there being no invocation of the dispute under the Escrow Agreement and the consequential contention that the reference to the Escrow Agreement in the prayer clause of this Application is misplaced, to my mind, does not deserve any further attention. If a cause of action against the Escrow Agent arises, it would have to be dealt with by the parties so advised.

9. Be that as it may, it is made clear that observations in this order are not an expression of an opinion on merits of the matter one way or the other. It is now settled law that all facets of disputes among the parties, including the jurisdiction and scope under the arbitration agreement, are matters that need to be dealt by the arbitral tribunal. All aspects including jurisdiction shall be dealt with by the Arbitral Tribunal.

10. In these circumstances, this Application is allowed by passing the following order:-

a) Mr. Akil Kureshi (former Chief Justice of Rajasthan High Court and Tripura High 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 Agreements referred to above. The contact details of the Learned Sole Arbitrator are set out below:-

Address : 617, Rajeha Chambers,
6th Floor, Free Press Journal-213,
Nariman Point, Mumbai – 400 021.
Email id – akil.kureshi@gmail.com

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 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 the 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;

g) 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 the electronic mode.

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

12. 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.]