

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.332 OF 2024
AND
ARBITRATION APPLICATION NO.333 OF 2024

Sosar Enterprises ...Applicant/Petitioner

Versus

Shilpa Kantilal Jekhia & Ors. ...Respondents

Adv. Sean Wassoodew *a/w Rupesh Mandhave, Rahul Jain i/b. Aditya, Advocate for Petitioner/Applicant.*

Mr. Dilip Rai *i/b. Aruna Singh, Advocate for Respondent No.4.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 29, 2025

PC :

1. The Arbitration Petition No.332 of 2024 is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) and Arbitration Application No.333 of 2024 is an Application filed under Section 11 of the Act.

2. The disputes and differences forming subject matter of these proceedings relate to a Memorandum of Understanding dated March 3, 2022, which contains an arbitration agreement in Clause 22 (found on Page No.56 of the Application under Section 11). In the interest of

brevity, the same is not reproduced. Suffice it to say, that the issue involved in these proceedings falls within the jurisdiction of this Court.

3. Today, when the matter is called out, Learned Counsel entered appearance for Respondent No.4 and Respondent Nos.1 to 3 are not present.

4. However, having examined the record taking note of the fact that the existence of an arbitration agreement is writ large on the face of the record. No useful purpose will be served by keeping these proceedings pending on the docket of this Court any further.

5. In these circumstances, it would be appropriate to refer all disputes and differences between the parties in connection with the said MOU dated March 3, 2022 to arbitration by the Learned Sole Arbitrator appointed hereby in the following terms.

6. In these circumstances, the Application deserves to be allowed, and consequently, we pass the following order:

a] Ms. Sonal , a Learned 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. The contact details of the Learned Arbitrator are set out below:-

Address : 3rd floor, Techno Heritage,
76/80, Nagindas Master Road,
Fountain, Fort, Mumbai 400 001.

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 of this order being made available on the website of this Court. 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 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; and

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. As regards Section 9 Petition, the same may be treated by the arbitral tribunal appointed hereby as an Application under Section 17. Given the efflux of time, should the Petitioner desire to modify or mould the ingredients of the Section 9 Petition, it shall be at liberty to do so. The parties shall approach the Learned Sole Arbitrator appointed hereby within a period of one week from the date on which this order is uploaded on this Court's website and take instructions on how to proceed further.

8. With the aforesaid directions, both the Section 9 Petition and the Section 11 Application are hereby *finally disposed of*.

9. Since the matter has now been referred to arbitration, between today and until the time the arbitral tribunal considers the contents of the Section 9 Petition as a Section 17 Application, none of the Respondents shall create any third-party rights on the subject matter of the MOU.

10. Learned Counsel for Respondent No.4 clarifies that he has received instructions only to appear for Respondent No.4; I do not think the absence of Respondent Nos.1 to 3 is relevant in view of the

nature of the order passed hereby. All parties should proceed to arbitration and make their submission to the arbitral tribunal, appointed hereby.

11. 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.]