
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 24 OF 2024

Sree Gloves & Accessories ...Applicant

Versus

Everlog Brands Tech Pvt. Ltd. ...Respondent

Mr. Akhlak A. Khan, a/w K. Hariharan, for the Applicant.

Mr. Danel Pancras, (through VC) for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 8, 2025

PC :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) seeking appointment of an arbitrator to adjudicate upon disputes and differences connected with a Business Transfer Agreement dated November 6, 2021. By the said agreement, business carried on under the brand name, “XTRIM”, a brand for leather products, was transferred to “Everlog Brands Pvt. Ltd.”, the Respondents in this Application by three sellers named in the agreement who were held out to be partners in a partnership firm called “Sree Gloves & Accessories”, engaged in manufacturing of the products in question.

2. The disputes and differences relate to “earn-out” consideration contracted between the parties in Annexure-2 to the said agreement, by which, a specified share of the revenues earned over three years after the business was transferred, was to be paid to the seller.

3. Today, when the matter is called out, Learned Counsel for the Respondent raises three objections. The first is that the firm which has moved the Application is not a party to the Business Transfer Agreement in question. On a plain reading of the documents forming part of the record, it is apparent that the partnership firm is not a limited liability partnership i.e. it is not a body corporate, but it is a partnership under the Indian Partnership Act, 1932, which does not, in the legal sense of the term, have an independent legal existence. Be that as it may, not only does the agreement recite that the firm is a seller, but also the signature clause demonstrating the execution of the agreement has the firm as a signatory, in addition to the three partners who too have signed.

4. This points to the fact that the objection is frivolous at least, *prima facie*. I hasten to clarify that the aforesaid observations are *prima facie* observations restricted to ascertaining the existence of an arbitration agreement, which is the limited jurisdiction of a Court

exercising powers under Section 11 of the Act, in terms of the law declared by the Supreme Court. The other two objections of the Respondent evidently relate to the merits of the case namely, that the conditions precedent to the transfer have not been met and that the steps to be taken prior to invocation of arbitration have not been taken. The last facet of the matter may also require some consideration, since it could cut to the root of whether the agreed procedure between the parties has been followed.

5. In this regard, a review of the record would show that the parties indeed engaged with one another but had not been able to find the resolution, and therefore, it cannot be said that the parties have not attempted to resolve their disputes before resorting to arbitration. This again is a *prima facie* observation and the parties are free to agitate all issues before the Arbitral Tribunal. In these circumstances this Application is allowed by passing the following order:-

- a) Mr. Vikramaditya Deshmukh, 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. The contact particulars of an Arbitrator are as under:-

Mr. Vikramaditya Deshmukh,
Add: 1W Dilwara West, next to Cooperage Tel
Exchange, M Karve Road, Mumbai- 400 021
Mobile ID: 9820675957
Email ID: vikram.deshmukh@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 the 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 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; 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;.

6. The Application is *disposed of finally* in the aforesaid terms.

7. 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.]