

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.128 OF 2024

Praful Vaghani	...Applicant
Versus	
Dhupar Chemicals Pvt. Ltd.	...Respondent

AND

ARBITRATION APPLICATION NO.129 OF 2024

Rays Prime Logistics Private Limited	...Applicant
Versus	
Dhupar Chemicals Pvt. Ltd.	...Respondent

Mr. Sutapa Saha, *Advocate for Applicant.*

Ms. Pinky Agarwal, *Advocate for Respondent (through VC).*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 08, 2025

PC :

1. These Applications have been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking the appointment of an arbitrator to deal with disputes and differences between the parties. The Applicant has been a supplier of industrial waxes to the Respondent and has been raising invoices from time to time. The invoices in question relate to the year 2013. Disputes and differences arose between the parties and a Civil Suit came to be filed before the City Civil Court, Mumbai some time in 2015.

2. In response to the Suit, the Respondent took out an application under Section 8 of the Act, referring to a clause in the invoices which according to the Respondent, in its affirmation on oath before that Court, constituted an arbitration agreement. Consequently, based on the position adopted on oath by the Respondent, the Learned City Civil Court was persuaded to pass an Order dated March 16, 2024, allowing the Respondent's Section 8 Application, and directed that the disputes be referred to arbitration. Pursuant to the aforesaid order, the Applicant invoked arbitration on April 10, 2024, giving the Respondent three names to choose from, for commencement of arbitration.

3. At this stage, the Respondent's stance changed. Now, the Respondent argued that the arbitration clause in question does not constitute an Arbitration Agreement, meaning thereby that the right course of action for the Applicant would be to file an appeal against the Order dated March 16, 2024 passed by the Learned City Civil Court, rather than to invoke arbitration in compliance with the said order. Put differently, this is a classic case of approbation and reprobation on oath by the Respondent.

4. Be that as it may, the jurisdiction of this Court necessarily requires ascertaining whether an arbitration agreement is in existence. The clause in question in the invoices reads thus :

*“Subject to Mumbai Jurisdiction/Arbitration Act.
Irrespective of your purchase order states.”*

5. What is evident from the aforesaid clause is that the parties had agreed that their disputes would be subject to the Arbitration Act with the Mumbai jurisdiction. This may be a highly inartful manner of having an arbitration agreement, but that this is an arbitration agreement is also a matter of a judicial finding by the Learned City Civil Court in its Order dated March 16, 2024.

6. It is at the Respondent's instance that the aforesaid order came to be passed, defeating the Applicant's efforts to have the disputes resolved for nearly a decade now. Since the Respondent's position on oath has been that this is an arbitration agreement and since the Applicant has accepted the finding of the Learned City Civil Court, without further challenge, an agreement between the parties has come to be formed that this clause is indeed an agreement to arbitration. In my opinion, this would constitute the agreement between the parties. Since this is one of the most cryptic arbitration agreements that one would have seen, for all matters of process and procedures, the provisions of the Act would govern the conduct of the arbitration.

7. In these circumstances, taking into account the serious length of time for which the disputes have remained unresolved on preliminary issues, I see no further reason to hold up the dispute resolution

mechanism any further, and allow this Application by passing the following order:-

a) Ms Shruti Vyas, 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 details of the Learned Sole Arbitrator are set out below:-

Address : 19, Meher Abad,
Near Tata Garden,
Bhulabhai Desai Road,
Mumbai 400 026.
Email : shrutidvyas@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] The fees payable to the Learned Sole Arbitrator shall be governed by the Bombay High Court (Fee payable to Arbitrators) Rules, 2018;

f] 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 electronic mode.

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