
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 243 OF 2024

Cloud Kitch Pvt. Ltd. ...Applicant

Versus

Food Boys Hospitalities LLP & Anr ...Respondents

Ms. Drishti Khurana, i/b Atif Shaikh, for the Applicant.

Mr. Aniesh Jadhav, i/b Mahadji Phalke, for Respondents.

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 to refer disputes and differences between the parties arising out of Service Agreement dated December 20, 2019. The arbitration agreement is contained in Clause 15.9 which is set out at page 44 of the Application. In the interest of brevity the same is not reproduced here.

2. Suffice it to say, it is apparent that the matter falls within the jurisdiction of this Court.

3. Having heard the parties at some length, it is found that the

primary objection on behalf of the Respondents is that the a plain reading of the arbitration agreement would show that the parties must, within ten days of service of a written notice from either party to the other party, hold a meeting in an effort to resolve the disputes in good faith. In the absence of an agreement to the contrary, such a meeting shall be held at the registered office of the Petitioner.

4. Mr. Jadhav, Learned Counsel on behalf of the Respondents submits that in terms of the law declared in *Iron & Steel Co. Ltd. v. Tiwari Road Lines¹*, *D.P. Construction v. M/s. Vishvaraj Environment Pvt. Ltd.²* and *Capacite Infraporjects Ltd. v. T. Bhimjyani Realty Pvt. Ltd.³*, it is imperative that a pre-invocation resolution process is adhered to, since such process would be an integral part of the “procedure” agreed between the parties for conduct of arbitration.

5. Put differently, the submission of Learned Counsel is that the principle of party autonomy would demand that if the parties have agreed with the procedure pursuant to which they would attempt to resolve their disputes, and that too prior to commencement of arbitration, non-adherence to the same would be fatal to the invocation

1 (2007) 5 SCC 703

2 Misc. Civil Application (Arbn). No.31 of 2021

3 2023 SCC OnLine Bom 1657

and initiation of the arbitration.

6. On the other hand, Learned Counsel for the Petitioner points to various email correspondence between the parties, ranging from around February 2021 to August 2021, which demonstrates that the parties were engaged with one another and were not able to resolve their disputes. The invocation notice in the instant case is dated August 18, 2021, whereby arbitration was invoked. It is evident that between February 2021 and August 2021, despite copious exchange of emails, the parties have not been able to resolve their disputes. Consequently, the objection boils down to the parties not having physically met at the registered office of the Petitioner. Learned Counsel for the Petitioner submits that physical meetings too have been held in the interregnum in locations such as cafes, in an attempt to resolve and reconcile, and no resolution was forthcoming.

7. I am mindful of the fact that the disputes and differences arose way back in 2021, and the parties are still in dispute over whether a pre-initiation procedure has been duly complied with. *Prima facie*, upon a review of the record I find that efforts indeed have been made to reconcile their disputes, and having failed in such attempt, this Application has been filed. Be that as it may, these are matters for

adjudication by the arbitral tribunal since the jurisdiction of this Court is restricted by the provisions of Section 11 (6A) of the Act. Being satisfied that the agreement executed indeed contains an arbitration agreement, the disputes and differences between the parties deserve to be referred to an arbitral tribunal.

8. Having heard the Learned Counsel as the officers of the Court, it would be in the fitness of things to pass the following order:-

- a) Mr. Charles D'Souza, 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 are as under:-

Mr. Charles D'Souza
Mobile No.: 9769939987 / 0226860666
Add: Charles De Souza, Meraki Chambers,
2nd Floor, 10 Bruce Street,
8/12, Homi Mody Street,
Navi Bombay House, Fort- 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 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 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;

9. This Application is ***finally disposed of*** in the aforesaid terms.
10. 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.]