

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
APPLICATION FOR APPOINTMENT OF ARBITRATOR NO.
11 OF 2023.**

SIEGWERK INDIA PVT. LTD. THR
LAWFUL REP. AJIT KUMAR SINGH ... Applicant.
VERSUS
ECONOMIC TRANSPORT ORGANIZATION
QTS PVT. LTD REP BY DIRECTOR AND
ANR. ... Respondents.

Mr Mavlon Afonso, Advocate for the respondents.

**CORAM: B. P. DESHPANDE, J
DATED: 15th February, 2024.**

P.C.

1. Present application is for appointment of Arbitral Tribunal to decide the disputes between the parties. When matter came up on 24.1.2024, the following order was passed:-

- 1. Heard Mr. Ankur Kumar, learned Counsel for the applicant and Mr. Mavlon Afonso, learned Counsel for the respondents.*
- 2. Though the learned Counsel for the respondents objected to the present application on the ground that the mandatory notice was not served upon him, he agreed that the petition could be considered as service of such notice and is ready to waive such notice. Learned Counsel for the respondents submits that as per clause 5(e) of the Lease Agreement, in case of disputes and differences, an Arbitral Tribunal could be appointed consisting of three arbitrators one nominated by the applicant, another by the respondent and a third nominated by two arbitrators.*
- 3. Both the learned Counsel appearing for the parties submit that within one week they will appoint an arbitrator and furnish the names to this Court. Only thereafter the said two Arbitrators could consider the name of other respective*

arbitrator.

4. Stand over to 01/02/2024.

2. Since both the learned counsel agree to furnish names of the arbitrator appointed from their side, matter was adjourned.

3. On the last date Mr A. Kumar, learned counsel appearing for the applicant by written application suggested name of the Advocate Nihal Kamat to be appointed as arbitrator of the applicant. Today, Mr M. Afonsao, learned counsel appearing for the respondents vide its application suggested the name of Advocate Monisha Viegas as a arbitrator to be appointed for and on behalf of the respondents.

4. In view of the above developments and the suggestion of the names of the arbitrators of the applicant as well as the respondents, matter could be disposed of by accepting such names for and on behalf of the applicant and on behalf of the respondents to act as an arbitrators. Agreement of lease dated 16.7.2018 contains arbitration clause in paragraph no. 5(e) which reads thus:-

5e That all disputes and differences whatsoever by and between the LESSOR and the LESSEE arising under or relating to this Lease Deed and/or the said premises shall be referred to arbitration of three arbitrators, one to be

nominated by the LESSOR, one to be nominated by the LESSEE and the third to be nominated by the two arbitrators so appointed by the LESSOR and the LESSEE. The decision of the arbitrators shall be final and binding on both the LESSOR and the LESSEE. The arbitration proceedings will be conducted at Goa in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof.

5. Now the applicant as well as the respondents suggested and nominated the arbitrator from their sides, said arbitrators could be considered as appointed for the applicant and respondents respectively who now are entitled to nominate third arbitrator, within a period of 15 days. Name of the third arbitrator so nominated by the two arbitrators, shall then constitute the Arbitral Tribunal. Once name of the third arbitrator is nominated, parties shall appear before the Tribunal consisting of three arbitrators for the purpose of fixing the date and fixing the schedule for arbitral proceedings. Such exercise shall be carried out within two weeks thereafter.

6. In these circumstances, the following order is passed :-

- a. Advocate Nihal Kamat and Advocate Monisha Viegas are appointed as Arbitrators, who shall appoint/nominate

third Arbitrator within 15 days.

- b. A copy of this order will be communicated to the learned Arbitrators by the Advocate for the Applicant within a period of one week from today.
- c. The learned Arbitrators are requested to forward their Statements of Disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Advocate for the Applicant so as to enable him to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statements on the file of this Application and a copy of the same shall be furnished to the Advocates for the Applicant and to the Advocates for the Respondent.
- d. The parties shall appear before the learned Arbitral Tribunal on such date and at such place as they nominate to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.
- e. Contact and communication particulars shall be provided by both sides to the learned Arbitrators within a period of one week from today. This information shall include a valid and functional email address as well as the mobile numbers of the respective Advocates.
- f. The parties have agreed that the Arbitrators

shall charge their fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee payable to Arbitrators) Rules, 2018. The parties have further agreed that all the arbitral costs and the fees of the Arbitrators will be borne by the Applicant and the Respondent equally and will be subject to the final Award that may be passed by the Tribunal.

- g. The parties immediately consent to a further extension of six months to complete the arbitration, should the learned Arbitrators find it necessary.
- h. The parties have agreed that the seat of the arbitration will be at Panaji, Goa. However, the venue of the Arbitration shall be decided by the Arbitral Tribunal taking into consideration convenience of the parties as well as their convenience.

7. In view of above, application stands disposed of.

B. P. DESHPANDE, J

VINITA VIKAS NAIK  Digitally signed by VINITA VIKAS NAIK
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