

IN THE HIGH COURT OF JAMMU AND KASHMIR AT
SRINAGAR

AA No. 14/2016
IA No. 04/2017
IA No. 02/2017
IA No. 01/2017
IA No. 03/2018
IA No. 02/2018
IA No. 01/2018

Mushtaq Ahmad Tanki and Ors.

... Petitioner(s)

Through: - Mr. M. A. Qayoom, Advocate.

V/s

Mohammad Azam Tanki and Ors.

... Respondent(s)

Through: Mr. M. I. Qadri, Sr. Advocate
with Mr. Naveed Gul, Adv.

Hon'ble Mr Justice Ali Mohammad Magrey, Judge

ORDER
27.11.2020

1. Petitioners and respondents 1 and 2 are stated to be engaged in the business, in respect of which they have executed various partnership deeds on 12.11.1980, 16.03.2002 and 25.03.2008. The business is conducted by them under different trade names and the partnership deeds have been executed by them *inter-se*.

2. Dispute having arisen between the parties regarding both assets as well as business, which is spread over within and outside the Union Territory of Jammu and Kashmir and the parties having not been able to settle the dispute, therefore, in terms of an Arbitration Agreement executed on 09.09.2015, both of them constituted an Arbitral Tribunal out of their

own free will and consent. The Arbitral Tribunal was constituted of the following Arbitrators:-

1. Haji Mohammad Ismail S/o Ghulam Jaffar R/o Butterfly Street, Old Secretariat Road, Srinagar.
2. Haji Ghulam Mohi-ud-Din Khan S/o Ghulam Hassan Khan R/o Kohna Khan, Dalgate, Srinagar.
3. Abdul Rashid Harco S/o Late Abdul Rahim Harco R/o Water Works Road, Brain Nishat, Srinagar.
4. Abdul Majid Baba S/o Late Ghulam Qadir Baba R/o Sanat Nagar, Srinagar.

3. The aforesaid arbitrators were empowered by the parties to enter into the reference and settle the dispute/differences amongst them regarding their assets and business as well as issues incidental and necessary thereto. The Arbitrators with the consent of the parties nominated Mr. M. A. Makhdoomi, Advocate as Umpire to head the Arbitral Tribunal. The arbitrators as well as the Umpire tendered their consent to act as such after the parties reposed trust and confidence in them. The Arbitral Tribunal was requested to settle the dispute and/or differences between the parties in respect of business as well as assets both moveable and immovable, subject to just claims and counter claims to be put forth before the Arbitral Tribunal. The Arbitral Tribunal was also requested to settle the dispute within a reasonable period of time and it was also agreed that the award of the Arbitral Tribunal will be binding on the parties.

4. The execution of the Arbitration agreement and appointment of arbitrators/Umpire, the parties submitted their claims and counter claims before the Arbitral Tribunal and while the Arbitrators/Umpire were in the process of finalizing the arbitration proceedings, the respondent No. 1,

Mohammad Azam Tanki, addressed a communication dated 16.02.2016, to the arbitrators and the Umpire stating therein that the Tribunal is biased towards the petitioners and that he has lost faith in the sense of Judgment of the Tribunal. It was also stated by him that if the Tribunal is allowed to continue, he will suffer grave injury and irreparable loss. It was also stated by him that he cannot permit the situation to continue in the manner as he is apprehensive that his valuable rights will be severely adversely affected and prejudiced, therefore, the present arbitration proceedings cannot continue under any circumstances. The respondent No. 1, accordingly, informed the arbitrators and the Umpire that he is withdrawing his consent to the Tribunal and to the appointment of the Tribunal with immediate effect. He accordingly, requested the Arbitrators and the Umpire to recuse themselves as he is keen in appointing a new Tribunal, so that the proceedings can be started afresh and continued in a just and lawful manner.

5. The petitioners herein have filed the instant petition, wherein prayer has been made to allow the application and decide on the termination of the mandate of the arbitrators/umpire or otherwise, appropriate orders including appointment of substitute arbitrators may kindly be passed in the matter, so that the dispute between the petitioners and respondents 1 and 2 is settled at the earliest in accordance with law.

6. When this matter was being heard finally, the suggestion was made to the learned counsel for the parties, for appointment of Court arbitrator for settlement of the dispute, comprising of former Hon'ble Chief Justice/ Hon'ble Judge of this Court. On 25.11.2020, learned counsel for the parties, consented for appointment of sole arbitrator for settlement of the dispute *inter-se* the parties on the subject and fix his arbitration fee, but still the Court granted them time to seek instructions of the parties. Today, learned

counsel for the parties along with parties present have consented for appointment of sole arbitrator namely Hon'ble Mr. Justice Mohammad Yaqoob Mir (Former Chief Justice of Meghalaya High Court) as sole arbitrator for settlement of the dispute arisen between the parties regarding both assets as well as business.

7. In view of above narration, I hereby, appoint Hon'ble Mr. Justice Mohammad Yaqoob Mir (Former Chief Justice of Meghalaya High Court), as an Arbitrator to enter into the arbitration proceedings for settlement of the disputes between the parties and direct as follows:-

- i. The parties shall file detailed claims and counter claims before the learned Arbitrator within three weeks.
- ii. The arbitrator shall render his award within the prescribed statutory period.
- iii. The learned arbitrator shall be entitled to fix his own fee in terms of the Schedule to the Central Arbitration and Conciliation Act, 1996.
- iv. The fees shall be paid in equal proportion by both the parties.
- v. As the business under dispute is spread in and outside the Union Territory of Jammu and Kashmir , viz Delhi and Mumbai, the learned arbitrator in case of a travel outside the Union Territory of J&K, in connection with the subject matter shall be entitled to travel by business class and to stay in the Hotel commensurate to his lordships status,
- vi. The learned arbitrator shall be entitled to Secretarial expenses also.
- vii. The learned arbitrator shall also be entitled to all incidental expenses.

viii. The parties shall appear before the learned arbitrator on 30th November, 2020 at 2:00 PM for directions.

8. The petition is allowed on the above terms along with all connected IA(s).

9. The learned arbitrator may make a requisition, if any records are required by him from the disposed of file, through his Secretary to the Registry of this Court, who shall provide the hard and soft copy of the same to the learned arbitrator.

10. Let a copy of this order be sent to the Hon'ble Mr. Justice Mohammad Yaqoob Mir (Former Chief Justice of Meghalaya High Court), appointed arbitrator, as also to the learned counsel for the parties, by the Bench Secretary of this Court.

(Ali Mohammad Magrey)
Judge

Srinagar
27.11.2020
Mohammad Yasin Dar

