

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL ARBITRATION PETITION NO.180 OF 2016
WITH
SHOW CAUSE NOTICE no.231 of 2017**

Glam India Private Limited

And Another

... Petitioners

Versus

Mode Media, Inc. (erstwhile Glam
Media, Inc.)

And Another

... Respondents

....

Dr. Abhinav Chandrachud a/w Ms. Sneha Nandgaokar and Mr. Aditya Vyas
I/b Vertices Partners for the Petitioners.

Mr. Mohit Advani I/b M/s Cyril Amarchand Mangaldas for the
Respondents.

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CORAM : S.C.GUPTE, J.

DATE : 4 DECEMBER 2018

P. C. :

. Heard learned Counsel for the parties.

2 This petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking protective reliefs pending a reference to arbitration. Petitioner No.1, who is a wholly owned subsidiary of Respondent No.1, has a claim against the latter under an agreement termed as 'Development Services Agreement'. It is the case of the Petitioners that as a result of non-payment of dues under this agreement, Petitioner No.1 is unable to pay its employees. It is an admitted position that Respondent No.1 was subjected to liquidation proceedings in US.

Respondent No.2 has been a special purpose vehicle established in US for protection of the assets of Respondent No.1 and administer them equitably amongst the Respondent's creditors according to the law of priority of claims in US. It is submitted by learned Counsel for the Respondents that the liquidation proceedings have so far resulted in realization of assets of Respondent No.1 and distribution of dividend mainly amongst secured creditors. Learned Counsel, however, states that steps in liquidation proceedings are still on, but as of today, there is no asset out of which any further dividend could be declared to the creditors including Petitioner No.1 herein. Anyway, learned Counsel submits that Petitioner No.1 has already lodged its claim in the liquidation proceedings pending in US.

3 By an order dated 2 May 2017, a learned Single Judge of this court has already considered whether any ad-interim relief should be granted in the matter. The learned Single Judge, after hearing the parties in extenso and after considering the material placed by them, came to a conclusion that the only remedy the Petitioners would have in the matter was to take according to the priority of their claim, once that is adjudicated, from the funds that are then available on a *pro rata* basis, and that no other provision is equitably possible to protect the Petitioners. Nothing has changed since the date of that order. The order had even recorded an agreement between the parties for appointment of a sole arbitrator instead of a panel of three arbitrators in accordance with the arbitration clause in development services agreement. The learned single Judge left it to the parties to make whatever application they wish to, before the sole arbitrator, keeping all contentions open. A disclosure was sought from a Senior Counsel of this Court for being appointed as an arbitrator. The

order of the learned single Judge has been confirmed by a Division Bench in appeal. Despite passage of more than a year after this order, there are no steps taken by the parties either to constitute the arbitral tribunal or to seek any appropriate relief, interim or otherwise, before the tribunal.

4 In the premises, there is nothing to be done in the arbitration petition herein. No relief obviously can be granted as of now in favour of the Petitioners under Section 9 of the Arbitration and Conciliation Act, 1996. The Arbitration Petition is, accordingly, dismissed. It is, however, open to the Petitioners to take steps for appointment of an arbitral tribunal consisting of a sole arbitrator based on the agreement between the parties to adjudicate the disputes and differences between the parties. It will also be open to the Petitioners to agitate their claims and seek satisfaction thereof in the liquidation proceedings pending in US. All rights and contentions of the parties on merits of the claims and entitlement of the Petitioners to participate in the estate of the Respondents are obviously kept open.

(S.C. GUPTE, J.)