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

**REVIEW PETITION (L.) NO.4 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO.58 OF 2019**

Pritam Vilas Rathod & Anr.	..Petitioners
Vs.	
Surendrakumar Lakshmandas Raval & Anr.	..Respondents

Mr.Navroz Seervai, Senior Advocate, with Mr.Subir Kumar for
Petitioners.

Mr.Farhan Dubhas with Mr.Rahul Jain, Mr.Prashant Nakati i/b.
M/s.Alpha Chambers for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 18th JANUARY, 2019

P.C.:

Heard Mr.Seervai, learned Senior Counsel for the petitioners, and
Mr.Dubhas for the respondents.

2. This Court by an order dated 19 December 2018 by consent of the
parties, disposed of Commercial Arbitration Petition (lodging) No.1599
of 2018 in the following terms:-

“(I) Mr.Justice J.P.Devadhar (Retd.) is appointed as
prospective sole arbitrator to adjudicate the disputes and
differences between the parties under the agreement dated
20 February 2017 and the agreement dated 24 February
2017.

(II) The learned arbitrator, fifteen days before entering the
arbitration reference, shall forward a statement of disclosure
as per the requirement of Section 11(8) read with Section
12(1) of the Arbitration and Conciliation Act,1996, to the

Prothonotary and Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties.

(III) Learned Counsel for the parties are agreeable that the present petition under Section 9 of the ACA shall be treated as an application under Section 17 of the ACA to be adjudicated by the learned Sole Arbitrator.

(IV) Learned Counsel for the petitioners states that the petitioners shall file a statement of claim within one week of the learned Arbitrator making disclosure under Section 11(8) read with Section 12(1) of the ACA.

(IV) All contentions of the parties on merits of the said application and on merits of the disputes are expressly kept open.

(V) Learned Counsel for respondents states that respondent no.2 is present in Court.”

3. Mr.Seervai, learned Senior Counsel for the petitioners submits that his client has some reservation in regard to the agreement reached by his client in clause (III) when it records that the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) shall be treated as an application under Section 17 of the ACA to be adjudicated by the learned Sole Arbitrator.

4. Mr.Seervai submits that there are certain issues as raised in the Section 9 petition which may not be arbitrable and would be required to be agitated in independent proceedings before the National Company Law Tribunal and thus, to include those issues in the Section 9 petition was a mistake on the part of the petitioner.

5. In the aforesaid circumstances, it needs to be observed that the petitioners are yet to file their statement of claim and it is thus open for

the petitioners to make an appropriate claim which is arbitrable. Further it would be also open for the petitioners to file Section 17 application praying for appropriate reliefs which will fall within the jurisdiction of the learned arbitrator.

6. Mr.Dubhas, learned Counsel for the respondents, has no objection for petitioners filing a statement of claim along with a Section 17 application for interim reliefs as the petitioners may deem appropriate, before the arbitral tribunal.

7. In view of this consensus, no further clarification of the consent order dated 19 December 2018 is called for.

8. All contentions of the respondents in regard to the statement of claim and Section 17 application as may be preferred by the petitioners are expressly kept open.

9. The review petition is accordingly disposed of. No costs.

10. Time to file the statement of claim and Section 17 application before the arbitral tribunal is extended by one week from today.

[G.S. KULKARNI, J.]