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

COMMERCIAL ARBITRATION APPLICATION (L) NO.118 OF 2019

Rushi Khambatta Associates	...	Applicant.
V/s.		
Chairman, Tata Institute of Social Sciences	...	Respondents

Mr. A. S.Rao, for the Applicant..

CORAM : G. S. KULKARNI, J.

DATE : 29th MARCH, 2019.

P.C. :

1] This application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, "ACA"); whereby the applicant seeks appointment of an arbitral tribunal for adjudication of the disputes and differences between the parties which are stated to have arisen under the agreement for availing professional architectural services including detailed design development for Hostel and Residential Building at Main and Naroji Campuses of Tata Institute of Social Sciences, dated 10th April, 2012.

2] This petition was first listed before the Court on 25th March, 2019. To enable learned counsel for the applicant to serve the respondent,

it was adjourned to 27th March, 2019. Despite service, on 27th March 2019, the respondent was not represented. Hence, on 27th March, 2019, following order was passed:-

"1] Today, Mr. Rao, learned counsel for the applicant has placed on record affidavit of his clerk Mr. Sandeep Namdeo Shinde, in regard service of the petition notice to the respondent that the petition be taken up for hearing today. Although respondent has acknowledged the receipt of the Notice, none appears for the respondent. As a last chance, stand over to 29.03.2019.

2] Learned counsel for the petitioner accordingly shall issue fresh notice enclosing a copy of the order passed by this court.

3] Despite service of notice, if on the adjourned date of hearing, respondents are not represented, the court shall proceed to pass further appropriate orders".

3] Learned advocate for the petitioner, accordingly issued a fresh notice dated 28th March, 2019 enclosing a copy of the order passed by this Court, noticing the respondent to remain present on the adjourned date of hearing which is today.

4] Learned advocate for the applicant intends to place on record affidavit of service which be filed in the office. The acknowledgement by the respondent of the Notice dated 28th March, 2019 is also tendered across the bar which clearly indicates that the respondent has received the notice of today's hearing. However, it appears that the respondent is not interested

to appear in these proceedings. Accordingly this application is taken up for final hearing.

5] Learned counsel for the applicant has drawn my attention to the agreement in question dated 10th April, 2012 and more particularly clause No.12 which contains arbitration agreement between the parties.

Clause No.12 of the agreement reads thus :-

"12. In the event of a disagreement or dispute between the Parties in relation to this agreement the parties shall attempt in good faith to resolve those differences falling which, all disputes or differences whatsoever which shall at any time hereafter (whether during the continuance of this Agreement or upon or after its discharge or determination) arise between the parties hereto or their respective, successor in title, transferees and assigns (as the case may be), touching or concerning this Agreement or its construction or effect, or as to the rights, duties, obligations, responsibilities and liabilities of the parties hereto or any of them, under or by virtue of this Agreement or otherwise, or as to any other matter of this Agreement, shall be referred to arbitration in accordance with and subject to the provisions of the Indian Arbitration and Conciliation Act 19096, or any statutory modification or re-enactment thereof for the time being in force. In the event of any dispute, only one arbitrator would be appointed on mutual consent. The awards of the Arbitrator shall be final and binding on the parties to the reference. The arbitration proceedings shall be held in Mumbai only. The parties hereto agree that whatsoever arising out of this agreement".

6] My attention is also drawn to a series of correspondence as made on behalf of the petitioner calling upon respondent to make payment of the professional bill as would be entitled to the applicant under the said agreement. Attention of the Court is also drawn to the affidavit dated

17.10.2018, by which the applicant has invoked the arbitration agreement and informed the names of the prospective arbitrators calling upon the respondent to concur in reference to the disputes for adjudication by appointing an arbitral tribunal. However, these notices were not responded. As there was no concurrence; on the part of respondent, to appoint an arbitral tribunal, the present application has been filed. It would be, thus, necessary for the Court to exercise jurisdiction under Section 11(6) of the ACA. Hence the following order:-

Order

- i] Smt.Justice Vasanti A. Naik, Former Judge of this Court is appointed as the prospective sole arbitrator to adjudicate the disputes and differences between the parties, arising under the agreement dated 10th April, 2012.
- ii] The prospective sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the provisions of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of these applications with a copy to be forwarded to both the parties;
- iii)At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today at a date and time as may be fixed by the prospective arbitrator.

iv) All contentions of the parties including on merits are expressly kept open.

(v) The Arbitration petition is disposed of in the above terms. No costs.

7] Office to forward a copy of this order to the learned Arbitrator on the following address:

At :- 322, Verma Chambers,
Homjee Street, Horniman Circle
Fort, Mumbai.

[G. S. KULKARNI, J]