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

ARBITRATION PETITION (L.) NO.73 OF 2019

Vishal Earth Movers India Pvt. Ltd.	..Petitioner
Vs.	
M/s.Valecha Engineering Ltd. & Anr.	..Respondents

Mr.Pradeep Thorat for Petitioner.
Ms.Priya Rao i/b. N.K. Sharma & Partners for Respondent No.2.

CORAM : G.S. KULKARNI, J.

DATE : 22nd FEBRUARY, 2019

P.C.:

This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby the petitioner has prayed for interim reliefs pending the arbitral proceedings.

2. The case of the petitioner is that the disputes and differences have arisen between the petitioner and the respondents under a sub-contract agreement dated 3 December 2018 which according to the petitioner was abruptly terminated on 16 January 2019. It is the petitioner's case that the performance guarantee of Rs.1 Crore was also furnished by the petitioner under clause 20 of the said agreement. In the above circumstances, the petitioner has prayed for the following interim reliefs:-

“a. That pending the hearing and conclusion of the Arbitration proceedings between the Petitioner and the Respondents, this Hon'ble Court be pleased to stay the operation, implementation and execution of the letter of Termination dated 16th January, 2019 and bearing Reference No. VEL/UP/RC/880413/HO/77.

b. That pending the hearing and conclusion of the Arbitration proceedings, the Respondents, their agents, servants and persons claiming through him be temporarily restrained by an Order of Injunction of this Hon'ble Court from creating any third party interests and/or parting with or disturbing the equipment, machinery and other resources mobilized by the Petitioner for the said Work.”

3. Considering the nature of the disputes when this petition was taken up for hearing on 14 February 2019, learned Counsel for the parties agreed that the parties can attempt to resolve the disputes, and in that event, Consent Terms can be placed on record. It was so recorded by the Court in the order dated 14 February 2019. Thereafter on 15 February 2019, the Court passed the following order:-

“1. By consent of the parties, stand over to 22 February 2019, to enable the parties to amicably settle the disputes.”

4. Today learned Counsel for the parties inform that an amicable settlement of the disputes is not possible.

5. On the above background, this petition was taken up for hearing. After this petition was heard for some time, learned Counsel for the parties are agreeable that the disputes and differences between the parties as arisen under the sub-contract agreement dated 3 December

2018 can be referred for adjudication by appointing a sole arbitrator. Learned Counsel for the petitioner also submits that the present petition under Section 9 of the ACA can also be converted into an application under Section 17 of the ACA to be adjudicated by the arbitral tribunal. The approach on the part of the parties is a fair approach. Accordingly, the petition need not be kept pending for further adjudication, it is required to be disposed of. Hence, the following order:-

ORDER

- (i) Mr.Pankaj Kowli, Advocate of this Court, is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties under the sub-contract agreement dated 3 December 2018.
- (ii) The learned sole prospective 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 & Senior Master of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties;
- (iii) This arbitration petition filed under Section 9 of the ACA is permitted to be converted into an application under Section 17 of the ACA to be adjudicated by the arbitral tribunal;
- (iv) All contentions of the parties on merits of the disputes as also on

the Section 17 application are expressly kept open;

(v) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

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

(vii) Office to forward a copy of this order to the learned prospective Arbitrator on the following address:

address: 31, Kamer Building, (Opposite Vardhaman Chamber),
Cawasjee Patel Street, Fort, Mumbai – 400 001.

Contact No. 9869218897 / 9167024439

6. At this stage, learned Counsel for respondent No.2 submits that the respondents have no objection for the petitioner demobilizing its machinery on the site.

[G.S. KULKARNI, J.]