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

COMMERCIAL ARBITRATION APPLICATION NO.34 OF 2019

Nuvoco Vistas Corporation Ltd. ... Applicant.

V/s.

Omkar Realtors and Developers Pvt.

Ltd ... Respondent

Mr. Mayur Bhojwani i/by M.K.Ambalal & Co.,for the
Applicant.

Ms. Asha Nair i/by Diamondwala & Co., for respondent

CORAM : G. S. KULKARNI, J.

DATE : 27th MARCH, 2019.

P.C. :

1] Heard Mr. Bhojwani, learned counsel for the applicant and Ms. Asha Nair, learned counsel for the respondent.

2] This application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, “ACA”); whereby the applicant prays for appointment of arbitral tribunal to adjudicate the disputes and differences which are stated to have arisen between the parties, under the Setting up, Operation and Maintenance and management agreement dated 27th February, 2012.

3] Learned counsel for the applicant has drawn my attention to the arbitration agreement between parties. Clause No.18 of the agreement provides for referring the dispute to arbitral tribunal, which reads thus :-

"18. GOVERNING LAW AND ARBITRATION

This Agreement shall be governed by and construed in accordance with the laws of India and all disputes, differences, claims whatsoever between the parties arising hereunder or in relation to this Agreement or to the said plant shall be referred to arbitration of three arbitrators, one to be nominated by Omkar, one to be nominated by Lafarge and the third to be nominated by the two arbitrators so appointed by the parties. The decision of the Arbitrators shall be final and binding on both the parties. The Arbitration proceeding shall be conducted in English Language. The venue of the arbitration proceeding will be Mumbai and conducted in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modifications or re-enactment thereof".

4] Learned counsel for the applicant would refer to the letter of the applicant's advocate dated 24th November, 2018, whereby applicant setting out the disputes and differences, which have arisen between the parties, invoked the arbitration agreement and sought reference of the disputes to the sole arbitrator.

5] Learned counsel for respondent, would submit that her clients intend to mutually settle the disputes and to that effect an email dated 19th February, 2019 is addressed to the advocate of the applicant. Learned counsel for the applicant has tendered the said email whereby it is informed

to the applicant that the respondent intends to mutually settle the said disputes. The said email is taken on record and marked as "X" for identification.

6] Having heard learned counsel for the parties and having perused the record, it is not in dispute that there is an arbitration agreement between the parties. It is also not in dispute that by a letter dated 24.11.2018, the applicant has invoked the arbitration agreement and requested the respondent for appointment of an arbitral tribunal.

7] After this application was heard for some time, learned counsel for respondent submits that her clients although intend to settle the dispute are not averse to the appointment of an arbitral tribunal, if the disputes are not amicably settled. She submits that however, some time be granted to the respondent to make an attempt to bring about an amicable settlement. Her submission is that if the attempt to mutually settle disputes fail, then in that event arbitral tribunal may proceed to adjudicate the dispute. The approach of the respondent is quite fair..

8] Learned counsel for the applicant is agreeable to this course of action. It is also agreed between the parties that though the arbitration clause provides for panel of three arbitrators, the disputes and differences

be referred for adjudication of a sole arbitrator.

9] In view of consensus between the parties, application can be disposed of by the following order:-

Order

i] Mr Farhan Dubhash, Advocate, is appointed as the prospective sole Arbitrator to adjudicate the disputes and differences between the parties, arising under the Setting up, Operation and Maintenance and management agreement dated 27th February, 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 this application with a copy to be forwarded to both the parties;

iii) At the first instance, the parties shall appear before the prospective arbitrator at a date and time as may be fixed by the prospective arbitrator, after 30th April, 2019.

iv) The arbitral Tribunal shall not enter the reference upto 30th April, 2019. In the meantime respondent intend to settle the dispute amicably

(v) All contentions of the parties on merits of the matter are expressly kept open.

(vi)The Arbitration Application is disposed of in the above terms.

No costs.

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

105, Bhagyoday
1st floor 79, N.M. Road,
Nagindas Master Road,
Fort, Mumbai 400 023.

[G. S. KULKARNI, J]