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

COMMERCIAL ARBITRATION PETITION (L.) NO.197 OF 2019

Ahluwalia Contracts (India) Ltd.	..Petitioner
Vs.	
Mumbai Metro One Private Ltd. & Anr.	..Respondents

Ms.Ishani Khanwilkar, Ms.Smiti Tewari and Ms.Sonal Alagh i/b.
M/s.Khaitan Legal Associates for Petitioner.
Mr.J.P. Sen, Senior Advocate, with Mr.Onkar Chandurkar, Ms.Bhavna
Singh i/b. Mulla & Mulla & C.B. & C. for Respondent No.1.

CORAM : G.S. KULKARNI, J.

DATE : 2nd APRIL, 2019

P.C.:

Heard learned Counsel for the petitioner and learned Counsel for the respondents.

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

- “a) This Hon'ble Court pass an order and direction restraining Respondent No.1 and their Directors, Officers, Assigns from invoking the Performance Bank Guarantee dated February 6, 2014;
- b) This Hon'ble Court pass an order and direction restraining Respondent No.2 from making payment of any amounts pursuant to invocation of Performance Bank

Guarantee dated February 6, 2014 by Respondent No.1.”

3. The case of the petitioner is that disputes have arisen between the parties under the contract agreement dated 23 December 2008 entered between the petitioner and respondent No.1 under which a performance bank guarantee dated 6 February 2014 has been issued by respondent No.2 at the instance of the petitioner in favour of respondent No.1. The case of the petitioner is that the respondent No.1 is not entitled to invoke the performance guarantee dated 6 February 2014 to receive payments thereunder on the grounds which are set out in the petition. This petition was listed before the Court from time to time.

4. Today Mr.Sen, learned Counsel for the respondent No.1, on instructions of his client - respondent No.1 would state that the respondent No.1 is agreeable for the disputes between the parties being referred for adjudication by appointing a sole arbitrator.

5. Learned Counsel for the petitioner on instructions is not averse to this course of action. It is also agreed between the parties that this petition as filed under Section 9 of the ACA alongwith the pleadings (reply affidavit of Mr.Virendra Joshi dated 12 March 2019) be permitted to be treated as an application under Section 17 of the ACA to be adjudicated by the arbitral tribunal.

6. In view of this consensus between the parties, this petition is required to be disposed of. Hence, the following order:-

ORDER

- (i) Mr. Justice Jainarayan Patel, Former Chief Justice of the Calcutta High Court, is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties under the contract agreement dated 23 December 2008;
- (ii) The learned sole prospective arbitrator, 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 issued to both the parties;
- (iii) This petition under Section 9 of the ACA along with pleadings shall be treated as an application under Section 17 of the ACA to be adjudicated by the learned prospective sole arbitrator;
- (iv) The arbitral tribunal shall adjudicate the Section 17 application as expeditiously as possible and preferably within a period of two weeks from the date of the application being filed;
- (v) All contentions of the parties including on merits of the matter are expressly kept open;

(vi) At the first instance, the parties shall appear before the prospective arbitrator on or before 6 April 2019 at time which may be mutually fixed by the prospective sole arbitrator;

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

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

address: Flat No.2501, Celesta Planet Godrej, 30, K.K. Marg,
SGM Chowk (Jacob Circle), Mahalaxmi,
Mumbai – 400 011.

Contact: 9167888444 / 9422803450

[G.S. KULKARNI, J.]