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

**COMMERCIAL ARBITRATION APPLICATION (L) NO.107 OF 2019
WITH
COMMERCIAL ARBITRATION PETITION (L) NO.250 OF 2019**

Morya Homes	...	Applicant/Petitioner
V/s.		
Suresh G. Wadhwa and anr	...	Respondents

- Mr. Aseem Naphade i/by Kunal Chheda, for the applicant/Petitioner in both the Application and the Petition.
- Mr. Chirag Balsara, a/w Mr. Rickin Dang i/by Ganesh & Co., for respondent No.1 in both the applicant and the petition.
- Mr. Sayeed Mulani with Ms. Shobhana Waghmare i/by Mulani & Co., for the respondent No.2 in Comm. Arbitration Petition (L) No.107 of 2019.

CORAM : G. S. KULKARNI, J.

DATE : 9st APRIL, 2019.

P.C. :

1] Learned counsel for the applicant in Commercial Arbitration Application (L) No.107 of 2019, seeks leave to delete respondent No.2 as impleaded in the Section 11 Application. Accordingly leave to amend. Amendment to be carried out by tomorrow.

3] Heard Mr. Naphade, learned counsel for the applicant/petitioner (for convenience referred as, "petitioner"), Mr. Balsara and learned counsel for the respondent No.1.

4] Commercial Arbitration Application (L) No.107 of 2019 is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "ACA), whereby the petitioner seeks appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties which are stated to have arisen under the MOU dated 25th June, 2009, Development Agreement dated 19th August, 010, Joint Venture Agreement dated 27th October, 2011 and MOU dated 20th August, 2015.

5] There is also Commercial Arbitration Petition (L) No.250 of 2019, filed under Section 9 of the ACA filed by the petitioner praying for interim reliefs pending arbitration proceedings.

6] After these proceedings were heard for some time, learned counsel for respondent No.1, on instructions, would agree that the disputes and differences between the parties be referred for the adjudication of an arbitral tribunal. He, however, submits that all contentions of the respondent No.1 including on the arbitrability of the issues be expressly kept open. Mr. Naphade, learned counsel for the petitioner would agree for this course of action.

7] Learned counsel for the parties also agree that the petition under Section 9 of ACA can also be treated as an application under Section 17 of the ACA to be adjudicated by the arbitral tribunal. In view of this understanding/consensus between the parties, both the application and the

petition are disposed of by following order:-

Order

i] Mr. Amrut Joshi, Advocate, is appointed as the prospective sole Arbitrator to adjudicate the disputes and differences between the parties, arising under the MOU dated 25th June, 2009, Development Agreement dated 19th August, 010, Joint Venture Agreement dated 27th October, 2011 and MOU dated 20th August, 2015;

ii] The prospective sole arbitrator, 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] Commercial Arbitration Petition (L) No.107 of 2019, filed under Section 9 is permitted to be treated as an Application under Section 17 of ACA to be adjudicated by the arbitral tribunal;

iv] The respondent No.1 shall file a reply to the Section 17 Application within one week from today and copy of the same be served on learned counsel for the petitioner well in advance;

v] Learned counsel for the petitioner contends that there is urgency to seek urgent ad-interim/interim reliefs in the Section 17 Application, the petitioner is permitted to move arbitration tribunal for such reliefs immediately on the learned sole arbitrator making a disclosure with an advance notice to respondent No.1.

vi] The arbitral Tribunal shall endeavour to adjudicate application under Section 17 of the ACA as expeditiously as possible preferably within a period of three weeks from the date of entering reference;

vii) At the first instance, the parties shall appear before the prospective arbitrator on the learned arbitrator making a disclosure as per clause (ii) above, at a date and time as may be fixed by the prospective arbitrator.

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

(ix) Both the Arbitration application and the petition are 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:-

c/o Chamber of Adv. Gourav Joshi
Senior Advocate,

[G. S. KULKARNI, J]