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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPLICATION (L) NO.111 OF 2019

L & T Housing Finance Ltd. ... Applicant

Versus

Ashoka Hi-tech Builders Pvt. Ltd. ...Respondent

ALONG WITH

COMMERCIAL ARBITRATION APPLICATION (L) NO.112 OF 2019

L & T Housing Finance Ltd. ... Applicant

Versus

Ashish Das & Ors. ...Respondent

Dr. Birendra Saraf a/w Mr. Ranjeev Carvalho, Mr. Sachin Chandarana, Mr. Vijayendra Purohit i/by Manilal Kher Ambalal & Co., for the petitioner/applicant in both the matters.

Ms. Richa Singh, for respondent No.4 in Commercial Arbitration Petition No. 149 of 2018.

CORAM: G.S.KULKARNI, J.

DATED: 25 March 2019

P.C.:

1] Heard Mr. Ranjeev Carvalho, learned counsel for the applicant and Ms. Richa Singh, learned counsel for respondent No.1. These applications are filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "ACA"), praying for appointment of an arbitral tribunal to

adjudicate the disputes and differences between the parties as set out hereafter.

2] The facts in brief are as under:-

The applicant under facility agreement dated 28.11.2015 had extended financial facilities to the principal borrower namely JSM Decons Pvt. Ltd. The respondent in Arbitration Application (L) No.111 of 2019, is a corporate guarantor to these financial facilities having executed a corporate guarantee agreement dated 30th November, 2015, between applicant and the said respondent. The respondents in Arbitration Application No.111 of 2019 and 112 of 2019, are personal guarantors in both these applications. Clause Nos. 52, 53 and 54 are common in the agreements in question and contain the arbitration agreement between the parties, which reads thus :-

"52. The parties agree to negotiate in good faith to resolve any and all disputes, differences, controversies or claim arising out of or in connection with the interpretation, performance or non -performance, or termination of this Guarantee. If the negotiations do not resolve the dispute to the reasonable satisfaction of Parties, then the Parties agree that all such disputes, differences, controversies and claims shall be resolved through arbitration under the Arbitration and Conciliation Act.

53. The arbitration shall be conducted before a sole arbitrator, who shall be appointed by the Lender in its sole, discretion. Such arbitrator shall be retired judge of any High Court or Supreme Court of India.

54. The seat of the arbitration shall be at Mumbai, India and shall be conducted under and in accordance with the Arbitration and Conciliation

Act, 1996 and rules made thereunder. The language of the arbitration shall be English".

3] By an order dated 15th March, 2018, passed by this Court, the applicants were permitted to serve the respondents by publication of notice in two local newspapers. Accordingly, learned counsel for the applicant has placed on record affidavit of service dated 22nd March, 2015, whereby the details of the notices as effected by publication into local newspapers namely Fress Press Journal and Raj Express (Hindi Edition), dated 19th March, 2019, evidencing publication/service of notice is placed on record. I have perused the notice as published in the local newspapers. Respondents despite service have not appeared. Accordingly the averments as made in the application are required to be taken as uncontrovered.

4] Having heard the learned counsel for the petitioner and on perusal of record, it is clear that there is an arbitration agreement between the parties, as noted above. It also appears to be quite clear that disputes have arisen between the parties. These circumstances are sufficient for this Court to proceed and exercise jurisdiction under Section 11 of the ACA, to appoint arbitral tribunal.

5] It needs to be noted that in the connected Arbitration Petition No.149 of 2018, this Court has already appointed an arbitrator. The issues which have arisen in these applications are also connected with the facility agreement dated 28.11.2015. Respondents have executed deeds of guarantee, making them liable to make payment to the applicant in case of default of payment by the principal borrower,. Considering the facts of the case, it would be appropriate that the Court appoints the same arbitrator as appointed in Commercial Arbitration Petition No.149 of 2018. Hence, the following order.

Order

- i] Smt. Justice R. P. Sondurbaldota, 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 28.11.2015.
- ii] The prospective sole arbitrator, 10 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 15 days from today at a date and time as may be fixed by the prospective arbitrator.

iv) The arbitral Tribunal shall endeavour to adjudicate application under Section 17 of the ACA as expeditiously as possible preferably within a period of four months from the date of entering into reference.

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

(vi) Both Commercial Arbitration Applications, are disposed of in the above terms. No costs.

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

c/o Suman Jain, Advocate
11/13, Botawalla Building, II nd floor, Office No.4A
Opp. Asiatic Central Library,
Horniman circle, Mumbai 400 023.

(G.S.Kulkarni,J.)