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

COMMERCIAL ARBITRATION APPLICATION NO.208 OF 2018

Chintan Arvind Shah & Anr. ..Applicants
Vs.
Harmya Developers & Ors. ..Respondents

Ms.Krisha Raja i/b.L.J. Law for Applicants.
Mr.Rajesh Maravoor i/b. Maravoor Wamorkar & Co. for Respondents.

CORAM : G.S. KULKARNI, J.
DATE : 11th JANUARY, 2019

P.C.:

Heard learned Counsel for the parties.

2. By this application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "ACA"), the applicants pray for appointment of an arbitrator to adjudicate the disputes and differences between the parties which are stated to have arisen between the parties under Confirmation Agreement dated 13 September 2014 to the Deed of Retirement cum Partnership Deed dated 1 October 2013 read with Memorandum of Understanding dated 1 October 2013. The arbitration clause is clause 14 in the agreement dated 13 September 2014 which reads thus:-

> "14. If any disputes or differences arise between the parties in connection with the validity, interpretation,

> implementation and/or alleged breach of any term or provision of these presents and/or any documents related or incidental hereto (hereinafter referred to as the "Dispute"), the parties shall endeavor to settle the Dispute amicably within thirty (7) days from the date of occurrence thereof, failing which, the dispute shall be referred to the arbitration to the sole Arbitrator under the provisions of the Arbitration and Conciliation Act, 1996, or any modification of re-enactment thereof for the time being in force. The venue of the Arbitration shall be at Mumbai, and the language of the Arbitration proceedings shall be English. The Arbitral Award shall be reasoned and given in writing and shall be final and binding on the parties. The Arbitrator/s shall also decide on the sharing of costs of the Arbitration proceedings, between the parties hereto. The Arbitrator/s will also have summary powers and shall be entitled to give interim directions and awards from time to time."

3. There is no dispute in regard to the said arbitration agreement. The applicants by their Advocate's letter dated 18 October, 2016 addressed to the respondents invoked the arbitration agreement and called upon the respondents for appointment of an arbitrator as suggested in paragraphs 11 and 12 of the said letter. However as there was no favourable response for appointing an arbitrator, the present application has been filed.

4. Considering the above facts, there is no dispute on the arbitration agreement entered between the parties. There is also no dispute that the applicants had invoked the arbitration agreement and sought reference of the disputes before the arbitral tribunal. This application was filed on 11 June 2018 however, no reply so far has been filed. The averments as made in the application are also required to be taken as

uncontroverted. In view of the provisions of Sub-Section (6A) of the Section 11 of the ACA, the endeavour of the Court would be only to examine the existence of the arbitration agreement. In the above premise, the application is required to be granted. Hence, the following order:-

ORDER

(i) Mr.Swanand Ganoo, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under Confirmation Agreement dated 13 September 2014 to the Deed of Retirement cum Partnership Deed dated 1 October 2013 read with Memorandum of Understanding dated 1 October 2013.

(ii) The learned sole 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 application with a copy to be forwarded to both the parties;

(iii) Office to forward a copy of this order to the learned Arbitrator.

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

(v) The application is disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]