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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.692 OF 2019

Kanaiyalal Ganpatlal Mewada

..Petitioner

Vs.

Mark Constructions & Ors.

..Respondents

Mr.Dishang Shah i/b. Mr.Piyush Shah with Mr.Harsh Gala for Petitioner.
Mr.A.S. Pal with Ms.Pooja Yadav i/b. Mr.Om Prakash Tiwari and Mr.J.P.
Mishra for Respondent Nos.1 and 2.

Ms.Triveni Jani i/b. Mr.J.S. Shukla for Respondent No.3.

Mr.Amit Tungare for Respondent No.4.

CORAM : G.S. KULKARNI, J.

DATE : 25th JULY, 2019

P.C.:

Heard Mr.Shah, learned Counsel for the petitioner, Mr.Pal, learned Counsel for respondent Nos.1 and 2, Ms.Jani, learned Counsel for Respondent No.3 and Mr.Tungare, learned Counsel for the respondent No4.

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

3. The case of the petitioner is that the disputes and differences have arisen between the parties under the Partnership Deed dated 1 November 2007 in the name of M/s.Mark Constructions. Learned Counsel for the petitioner has contended that there is another

unregistered partnership firm by the same name wherein the petitioner and respondent Nos. 2 and 3 are the partners of the said firm. It is stated that the disputes which have arisen under the said partnership deed are pending adjudication by the arbitral tribunal of Mr.Minoo Siodia.

4. The contention as urged on behalf of the petitioner is that there would be need to pass interim orders on this Section 9 application in as much as it is now revealed in the 11th meeting held by the arbitral tribunal in respect of the other firm that certain monies have been paid for the property viz. Jamiya Safiya Building from the unregistered partnership firm as recorded by the learned sole arbitrator. The contention of the petitioner is that a statement was made on behalf of respondent Nos.2 and 3 before the arbitral tribunal as recorded in the Minutes of the Meeting dated 12 December 2018 in the adjudication of Section 17 application that the respondent Nos.2 and 3 shall not create any third party rights and interests in respect of the property viz. Jamiya Safiya Building and the said statement was to operate till Section 17 application is heard and decided by the learned sole arbitrator.

5. It is not in dispute that the Section 17 application filed by the petitioner before the said arbitral tribunal is pending adjudication and as recorded by the arbitral tribunal in the Minutes of the Meeting dated 12 December 2018 the statement as made on behalf of respondent Nos.2 and 3, as noted above continues to operate till date. It is informed that the arbitral proceedings before the sole arbitrator are adjourned to 22 August 2019.

6. On the above background, after this petition was heard for sometime, learned Counsel for the parties agreeable that the disputes

which have arisen between the parties under the respondent No.1 partnership firm viz. M/s.Mark Constructions can also be referred for arbitration by appointing an arbitral tribunal. It is also agreeable that this petition filed under Section 9 of the Act be converted as an application under Section 17 of the Act to be adjudicated by the arbitral tribunal.

7. In the above circumstances, the petition is being disposed of by the following order:-

ORDER

- (i) Mr.Hormaz C. Daruwalla, Advocate of this Court, is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties under the Partnership Deed dated 1 November 2007.
- (ii) The learned prospective sole 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 forwarded to both the parties;
- (iii) This petition filed under Section 9 of the Act is permitted to be converted into an application under Section 17 of the Act to be adjudicated by the arbitral tribunal;
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 7 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) All contentions of the parties on merits of the disputes as also on the Section 17 application are expressly kept open;

- (vi) The petitioner is at liberty to seek urgent ad-interim orders before the arbitral tribunal so appointed;
- (vii) The fees payable to the arbitral tribunal shall be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018;
- (viii) The petition is disposed of in the above terms. No costs.
- (ix) Office to forward a copy of this order to the learned Arbitrator on the following address:

“Behramji Mansion, 3rd Floor, Sir P.M. Road, Mumbai – 400 001.
Contact No. 9820004743
E-mail: hormaz@gmail.com”

[G.S. KULKARNI, J.]