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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.283 OF 2019

Schneider Electrics India Pvt. Ltd.	..Applicant
Vs.	
Sheth Developers & Realtors (India) Ltd.	..Respondent

Ms.Rita Joshi with Mr.Swapnil Kamble for Applicant.
Mr.Kishor Salunkhe for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 15th JULY, 2019

P.C.:

Heard learned Counsel for the parties.

2. On an application filed under Section 11 read with Section 15(2) of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) dated 5 March 2019, the Court has passed the following order:-

“ Heard Mr.Tamboly, learned Counsel for the applicant and Mr.Salunkhe, learned Counsel for the respondent.

2. This is an application under Section 11 and 15(2) of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby the applicant has prayed for appointment of a substitute arbitrator as the arbitrator earlier appointed by this Court by an order dated 15 June 2018 in arbitration application No.96 of 2018 has expressed his inability to act as an arbitrator as recorded in the minutes of the meeting dated 30 October 2018 (Exhibit-X, page 193 of the paper-book). Consequent thereto, the applicant by its letter dated 17 December 2018 requested the respondent to appoint a sole arbitrator as nominated and the name was referred in paragraph 9 of the said letter. As the respondent did not concur as informed by the respondent's Advocate to the Advocates for the applicant by letter dated 5 January, 2019, present application has been filed.

3. After the application was heard for sometime, learned Counsel for the respondent on instructions would submit that his clients are agreeable for appointment of a substitute arbitrator.

4. In view of the above consensus between the parties, the application can be conveniently disposed of. Hence, the following order:-

ORDER

(i) Mr. Shailesh Shah, Senior Advocate of this Court, is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties in relation to three work orders dated 21 March 2011 as amended by three work orders dated 20 October 2011 and further amended by three work orders dated 29 October 2012 along with two addendum dated 14 December 2011, in substitution of the arbitral tribunal as appointed earlier.

(ii) The learned prospective 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) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(iv) All contentions of the parties on merits of the disputes are expressly kept open;

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

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

3. It is informed that the learned prospective arbitrator so appointed, by his communication dated 27 March, 2019 addressed to the parties has expressed his inability to undertake the assignment due to time constraints. Thus, the parties are again before the Court.

4. In the above facts and circumstances, it would be appropriate to appoint a substitute arbitrator. Hence, the order:-

ORDER

- (i) Mr. Justice P.D. Kode (Retd.) is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties in relation to three work orders dated 21 March 2011 as amended by three work orders dated 20 October 2011 and further amended by three work orders dated 29 October 2012 along with two addendum dated 14 December 2011, in substitution of the arbitral tribunal as appointed earlier.
- (ii) The learned prospective 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) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (iv) All contentions of the parties on merits of the disputes are expressly kept open;
- (v) The fees payable to the arbitral tribunal shall be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018;
- (vi) The application is disposed of in the above terms. No costs.
- (vi) Office to forward a copy of this order to the learned Arbitrator.
“204, 2nd Floor, Vardhaman Chambers, Cawasjee Patel Street,
Lane adjacent to Dwarka Hotel, Fort, Mumbai – 400 0001.
Contact No. 9969101100”.

[G.S. KULKARNI, J.]