

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMMERCIAL NOTICE OF MOTION (L) NO.1720 OF 2019
IN
COMMERCIAL SUIT (L) NO.760 OF 2019**

Pinak Bharat & Co. & Ors.	..Applicants
In the matter between	
Mehta Developers & Ors	..Plaintiffs
Vs.	
Pinak Bharat & Co. & Ors	..Defendants

WITH
COMMERCIAL NOTICE OF MOTION (L) NO.1641 OF 2019
IN
COMMERCIAL SUIT (L) NO.760 OF 2019

Ms. Hiral Thakkar a/w Mr. Viral Shukla, Mr. Darshan Ashar and Ms. Heena Jewani I/b M/s. Shukla and Associates for Plaintiff/Applicant;
(Mr. Manish Rathod- Constituted Attorney of Plaintiff No. 1 and Mr. Jatish Mehta – Plaintiff No. 2 are present)
Mr. Mayur Khandeparkar I/b Prerak Ashok Sharma for Defendants

**CORAM : K.R.SHRIRAM, J.
DATE : 5th AUGUST 2019**

P.C.:

1 At the outset, Ms Thakkar tenders draft amendment, which is taken on record and marked “X” for identification. Mr. Khandeparkar agrees to the amendment application being allowed subject to rights and contentions of defendants being kept open. Therefore, amendment allowed as per draft tendered. Amendment to be carried out within three weeks from today.

2 Mr. Khandeparkar states that this notice of motion has been

filed on behalf of defendants though defendant no.2 is not a party to the arbitration agreement. Mr. Khandeparkar states that in paragraph 16 of the plaint, plaintiffs have stated that though there is an arbitration agreement between plaintiffs and defendant no.1 through defendant nos.3 to 5, defendant no.2 is not a party to the said arbitration agreement and hence plaintiffs have filed this suit. Mr. Khandeparkar states that in view of this application being filed on behalf of all defendants including defendant no.2, defendants are ready and willing to go on for arbitration. Mr. Khandeparkar further states that defendants' advocates on record will address a communication to plaintiffs' advocates on the understanding which they have arrived at separately regarding the reliefs sought in plaintiffs' commercial notice of motion (l) no.1641 of 2019.

3 Ms Thakkar appearing for plaintiffs on instructions from plaintiff no.3, a partner of plaintiff no.1, who is present in court, also states that plaintiffs have no objection to refer all the disputes to arbitration of sole arbitrator.

4 In view of the above, by consent, Mrs. Justice Nishita Mhatre (Retd.), a former Judge of this court and Acting Chief Justice of Calcutta High Court, having her office at Unit No.7, Ground Floor, Bandukwala Building, British Hotel Lane, Off Bombay Samachar Marg, Fort, Mumbai 400001, Mobile No.9821165948, Email:nishitamhatre@gmail.com, is appointed as sole arbitrator, to arbitrate on all disputes between the parties

including counter claim, if any, arising out of, in connection with and in relation to the MOU dated 25th September 2018 (inadvertently written as 25th August 2018) and supplementary agreement dated 23rd October 2018.

5 The arbitrator's fees and expenses and expenses relating to arbitration shall be shared equally between plaintiffs on one side and defendants on the other and the same shall be subject to costs in the arbitral proceedings.

6 The arbitrator shall make a disclosure in writing as required under section 11(8) read with section 12(1) of the Arbitration and Conciliation Act 1996 (the said Act) and give the same directly to the parties.

7 Plaint shall be treated as statement of claim and the commercial notice of motion (l) no.1641 of 2019 filed by plaintiffs shall be considered as an application under section 17 of the said Act.

8 All rights and contentions of the parties are kept open.

9 Suit as well as this notice of motion and other interim applications accordingly stand disposed.

10 Refund of court fees, if any, in accordance with rules.

11 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)