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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.974 OF 2018

Gammon India Limited

..Petitioner

Vs.

Godrej Projects Development
Private Limited

..Respondent

Ms.Triveni Jani i/b. N.K. Sharma & Partners for Petitioner.

Mr.Sarosh Bharucha with Ms.Kanika Sharma, Ms.Madhulika Murthy,
Ms.Shilpa Sengar i/b.Vashi & Vashi for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 11th FEBRUARY, 2019

P.C.:

Heard learned Counsel for the petitioner.

2. This is a petition under Section 14(1)(a) of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) making the following prayer:-

“a) That in exercise of its powers under Section 14(1)(a) of the Arbitration and Conciliation Act, 1996, this Hon'ble Court be pleased to appoint the substitute Presiding Arbitrator, to act along with the two Co-Arbitrators for the completion of arbitration proceedings of the disputes mentioned herein above.”

3. The disputes and differences between the parties have arisen under the agreement dated 18 August 2012. The petitioner by its letter

dated 30 March 2015 addressed to the respondent had invoked the arbitration agreement and notified its intention to adjudicate the disputes and differences between the parties by arbitration. Thereafter the petitioner by its letter dated 8 July 2015 had nominated Mr.R.H. Tadvī as an arbitrator on its behalf in terms of clause 18 of the arbitration agreement between the parties. The respondent by its letter dated 7 July 2016 informed the petitioner of appointing Mr. Justice Bhimrao N. Naik (Retd.) as an arbitrator on its behalf. In September 2016, the learned arbitrator so appointed by the parties appointed Mr.Ajit Pawar as the Presiding Arbitrator and the arbitral tribunal was accordingly constituted. On 21 November 2016 statement of claim was filed on behalf of the petitioner. On 15 February 2017 the respondent filed its statement of defence and counter claims. About 9 hearings were conducted by the arbitral tribunal. On 27 March 2018 on conclusion of the hearing, the arbitral proceedings were adjourned to 27 June 2018 for final hearing. However, on 18 June 2018, learned presiding arbitrator Mr.Ajit Pawar passed away. This was informed to the parties in the meeting which was held on 19 July 2018.

4. Learned arbitrators so appointed by both the parties informed the parties that they were not able to agree with the name of substituting arbitrator and directed the parties to take appropriate action to fulfill

the vacancy in the arbitral tribunal and accordingly, the present petition has been filed.

5. Heard learned Counsel for the parties.

6. A reply affidavit dated 1 November 2018 has also been placed on record on behalf of the respondent. Learned Counsel for the respondent has contended that on technical aspects of the present case, the presiding arbitrator can be appointed.

7. Having heard learned Counsel for the parties and having gone through the record, the petition is required to be allowed in view of the learned Presiding Arbitrator having been passed away on 18 June 2018. Accordingly, the following order:-

ORDER

(i) Dr. C.S. Suryawanshi is appointed as a sole Presiding Arbitrator in substitution of the presiding arbitrator Mr.Ajit Pawar who passed away on 18 June 2018.

(ii) The learned sole Presiding 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 petition with a copy to be forwarded to both the parties. Also copies of the same be forwarded to the parties;

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

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

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

[G.S. KULKARNI, J.]