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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION APPLICATION NO. 252 OF 2018
WITH
COMM DIVISION NOTICE OF MOTION NO. 2397 OF 2019**

Delhi Integrated Multi Modal Transit System Ltd ...Applicant
(DIMTS)

Versus

Maharashtra State Road Development ...Respondent
Corporation (MSRDC)

Ms Minakshi Jyoti, *i/b SG Bane, for the Applicant.*
Mr Arun Siwach, *i/b Cyril Amarchand Mangaldas, for the*
Respondent.

CORAM: G.S. PATEL, J.
DATED: 25th November 2019

PC:-

NOTICE OF MOTION NO. 2397 OF 2019:

1. For the reasons set out in the affidavit in support, the delay of 113 days in filing the present notice of motion is condoned. It appears that the application was dismissed by an order dated 13th June 2019 on account of absence of the applicant. This is explained in the affidavit in support to have been inadvertent.

2. The Notice of Motion is made absolute in terms of prayer clauses (a) and (b). The Arbitration Application is restored to file.

COMM ARBITRATION APPLICATION NO. 252 OF 2018:

3. The parties entered into an agreement dated 30th January 2019. The applicant was to prepare a feasibility study report for the respondent. Clause 7.1 of the agreement contains the arbitration clause. This reads:

“Article 7: Dispute Resolution

7.1 In the event of any dispute of whatever nature howsoever arising under or out of or in relation to this Agreement, the same shall be settled by way of arbitration proceedings by a sole arbitrator to be appointed by MSRDS. The award of the arbitrator shall be final and binding on both the parties. The venue of the arbitration shall be Mumbai. The language of the arbitration and the award shall be English. Subject to the foregoing, the parties agree to subject themselves to the jurisdiction of competent courts at Mumbai to try and adjudicate upon any matter concerning the Agreement. However, any award passed in pursuance of arbitration proceedings may be executed by any court of competent jurisdiction anywhere.”

4. Disputes and differences arose between the parties and by its communication dated 6th January 2016 (Exhibit “A5”) the applicant sent a legal notice to the respondent invoking arbitration.

5. Parties agree on the name of Ms Manjari Shah, learned Advocate of this Court, as the sole arbitrator to decide the disputes

and differences between the parties arising from the agreement dated 30th January 2012.

6. Hence, the following

O R D E R

(a) **Appointment of Arbitrator:** By consent, Ms Manjari Shah, learned Advocate of this Court, is hereby nominated to act as a Sole Arbitrator.

(b) **Communication to Arbitrator of this order:**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from today of the order being uploaded.

(ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Ms Manjari Shah, Advocate

Address Flat No. 19, 5th Floor,
Dhanvantari Bhavan, 143B,
August Kranti Marg,
Mumbai 400 036

Mobile 98211 15928

Email manjaridshah@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward her statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently in advance of her entering upon the reference to his arbitration. That statement will be retained on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as she nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email id.
- (f) **Interim Application/s:**
 - (i) Liberty to both sides parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such

application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit. All affidavits to be filed as per the directions of the learned Sole Arbitrator.

- (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.
- (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (j) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.
- (k) All contentions, including as to limitation are left open.

7. The arbitration application is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)