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

ARBITRATION APPLICATION NO.120 OF 2017

Narang International Hotels Pvt. Ltd. ..Applicant
Vs.
Mumbai International Airports Pvt.Ltd. & Anr. ..Respondents

**WITH
ARBITRATION PETITION NO.459 OF 2017**

Narangs International Hotels Pvt. Ltd. ..Petitioner
Vs.
Mumbai International Airports Pvt.Ltd. & Anr. ..Respondents

**WITH
ARBITRATION PETITION NO.1048 OF 2018**

Narangs International Hotels Pvt. Ltd. ..Petitioner
Vs.
Mumbai International Airports Pvt.Ltd. & Anr. ..Respondents

Mr.Navroz Seervai and Mr.Gaurav Joshi, Senior Advocates, with Mr.Piyush Raheja i/b. Mr.Pankaj Parsurampur, Mr.Aatish Parsurampur for Applicant/Petitioner.

Mr.Janak Dwarkadas, Senior Advocate, with Mr.Aditya Thakkar, Ms.Bindi Dave, Mr.Raghav Gupta, Ms.Ankita Sangwan i/b. Wadia Ghandy & Co. for Respondent No.1.

Mr.Kevic Setalvad, Senior Advocate, with Dr.Aolo, Mr.Arsh Misra, i/b. M.V. Kini for Respondent No.2 (AAI).

CORAM : G.S. KULKARNI, J.

DATE : 30th JANUARY, 2019

P.C.:

By consent of the parties, Arbitration Petition No.1048 of 2018 , is taken on board.

2. Arbitration Application No.120 of 2017 is filed by the applicant Narang International Hotels Pvt. Ltd. under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) praying for appointment of a sole arbitrator for adjudicating the disputes that have arisen between the parties in connection with or in relation to the agreement dated 6 May 1988 read with the minutes of the meeting dated 28 January 2010. Arbitration Petition No.459 of 2017 and Arbitration Petition No.1048 of 2018 are also filed by the applicant Narang International Hotels Pvt. Ltd. Under Section 9 of the ACA seeking interim reliefs pending the arbitral proceedings.

3. There is a background of earlier litigation between the parties. Attention of the Court is drawn to an order dated 20 October 2015 passed by this Court in Arbitration Petition No.1221 of 2015 whereby this Court in paragraph 9 of the said order observed that the issues in regard to the terms and conditions set out in Minutes of the Meeting dated 28 January 2010 whether can be read in isolation or are over and above the terms and conditions of the Lease Deed dated 20 May 1987, will have to be adjudicated upon by the learned arbitrator. Further in paragraph 13 of the said order, the Court observed that even respondent No.2-Airports Authority of India (for short 'the AAI') has accepted that

an arbitrator in terms of Clause 35 of the Lease Deed Agreement would be required to be appointed and which can be done within four weeks of the said order. The statement as made on behalf of the AAI came to be accepted. As appointment of an arbitrator could not be made within the time as directed the AAI moved this Court on 20 November 2015. This Court accordingly granted extension of time by two weeks to the AAI to appoint an arbitrator. The court recorded that Respondent No.1- Mumbai International Airports Pvt.Ltd. also did not have any objection for the extension of time as sought by the AAI.

4. It is not in dispute that the AAI did not appoint an arbitrator despite the said orders of the Court. In between as certain circumstances arose, the applicant preferred the above two petitions under Section 9 of the ACA. The present application is accordingly filed by the applicant under Section 11 of the ACA for appointment of a sole arbitrator.

5. After this petition was heard for sometime, learned Senior Counsel for the applicant and for respondent no.1 on instructions are agreeable that in the facts and circumstances of the case, the disputes need to be adjudicated by an arbitral tribunal and are agreeable for appointment of a sole arbitrator to adjudicate the said disputes between

the parties. It is also agreed that the petitions under Section 9 of the ACA in that event can also be treated as applications under Section 17 of the ACA to be adjudicated by the learned sole arbitrator. Respondent No.2-AAI also cannot take a stand contrary to the orders dated 20 October 2015 and 20 November 2015 passed by this Court.

8. On the above conspectus, further adjudication of this application and the Section 9 petitions is not called for. Hence, the following order:-

ORDER

(i) Mr.Justice R.C. Lahoti, Former Chief Justice of India, is appointed as a Sole Prospective Arbitrator to arbitrate the disputes and differences between the parties under the agreement dated 6 May 1988 read with the minutes of the meeting dated 28 January 2010.

(ii) The learned prospective 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 ACA, to the Prothonotary & Senior Master of this Court, to be placed on record of this application, as also furnish the same to the parties;

(iii) Arbitration Petition No.459 of 2017 and Arbitration Petition No.1048 of 2018 filed under Section 9 of the ACA shall be treated as applications under Section 17 of the ACA to be adjudicated by the learned sole arbitrator.

- (iv) All contentions of the parties including on the arbitrality and the jurisdiction of the arbitral tribunal are expressly kept open.
- (v) The application and the petitions are disposed of in the above terms. No costs.

Office to forward a copy of this order to Mr. Justice R.C. Lahoti,
Former Chief Justice of India, prospective Arbitrator.

[G.S. KULKARNI, J.]