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

COMMERCIAL ARBITRATION PETITION (L) NO.1184 OF 2019

Jain Decorators	...	Petitioner
V/s.		
Maple Leaf LLP and ors	...	Respondents

**WITH
COMMERCIAL ARBITRATION APPLICATION (L) NO.446 OF 2019**

Anil Mehta	...	Petitioner
V/s.		
Maple Leaf Enterprises LLP and ors	...	Respondents

- Mr. Sharique Nachan i/by Ramiz Shaikh, for the applicant/Petitioner.
Mr. Rajesh Mirchandani for for respondent Nos. 1, 2 & 7.
- Mr. Shreepad Murthy a/w Abhishek Patil, for respondent Nos. 3 and 5.
- Mr. Shanay Shah a/w Milani Sanghvi i/by Nikihil Kadam, for respondent nos. 4 and 6.

CORAM : G. S. KULKARNI, J.

DATE : 17th October, 2019.

PC. :

1] Heard learned counsel for the parties.

2] Commercial Arbitration Application (L) No.446 of 2019 is filed under

Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”), whereby the petitioner has prayed for appointment of arbitral tribunal, for adjudication of disputes and differences between the parties, which are stated to have arisen under the Memorandum of Understanding dated 26th July, 2017, executed between the petitioner and respondent No.1. Respondent Nos. 2 to 7 are the erstwhile partners of respondent No.1 firm.

2] There is no dispute in regard to the existence of arbitration agreement. Clause (p) of the Memorandum of Understanding, is the arbitration agreement which reads thus :-.

“(p) In the even of any dispute with regard to the subject matter of this MOU or matter incidental hereto, same shall be referred to the common arbitration of any counsel practicing in the High Court. The decision of the Arbitrator shall be final and binding upon the parties hereto. The provisions of Arbitration and Conciliation Act, 1996 shall apply to such arbitration. The costs of appointing an arbitrator through the High Court and all subsequent costs shall be absolutely borne 50% each between Maple and Jain Decorators”.

3] By petitioner’s advocate letter dated 1st October, 2019, the arbitration agreement was invoked and the respondent was requested to appoint an arbitral tribunal to adjudicate disputes and differences between the parties. However, although the statutory period of 30 days as provided

under Section 11(4) of the Act expired, the respondent did not take any steps to appoint an arbitral tribunal.

4] Commercial Arbitration Petition (L) No.1184 of 2019, is filed under Section 9 of the Act, for interim measures pending arbitral proceedings. Section 9 petition was heard on the earlier occasion and thereafter section 11 petition has been filed.

5] Having heard learned counsel for the parties and having perused the record, in my opinion, in the facts of the case, it would be in the interest of parties that an arbitral tribunal is appointed to adjudicate the disputes and differences between the parties, and that the Section 9 petition is permitted to be converted into application under Section 17 of the Act, to be heard by the arbitral tribunal. The parties are not averse to this arrangement.

6] Mr. Mirchandani, learned counsel for the respondent Nos. 3 and 5 has tendered reply affidavit to the petition, which he states, that the same can be accepted as reply to Section 17 Application. The other respondents, who have not filed their reply to Section 9 petition are at liberty to file their replies to the Section 17 Application.

7] In view of above consensus between the parties, the following order is passed.

Order

i] Mr. Rashmin Khandekar, Advocate of this Court is appointed as the prospective sole Arbitrator to adjudicate the disputes and differences between the parties, arising under the agreement Memorandum of Understanding dated 26th July, 2017;

ii] The prospective sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the provisions 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;

iii) Proceedings of the Section 9 petition, are permitted to be converted into an application under Section 17 of the Act, to be adjudicated by the arbitral tribunal;

iv] The petitioner shall present the Statement of Claim alongwith Section 17 Application, within a period of four weeks from today. The parties are at liberty to file such further pleadings as may be necessary;

v] At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today at a date and time as may be fixed by the prospective arbitrator;

vi] The arbitral Tribunal shall make an endeavour to adjudicate application under Section 17 of the Act as expeditiously as possible preferably within a period of six weeks from the date of filing of the Section 17 application;

vii] The learned prospective arbitrator shall endeavour to publish an award as expeditiously as possible and within the time limit as prescribed under Section 29-A of the Act;

viii] The fees of the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018;

(ix) All contentions of the parties on merits of the matter are expressly kept open;

(x) Both these petitions are disposed of in the above terms. No costs.

8] Office to forward a copy of this order to the learned Arbitrator on the following address:

Rashmin Khandekar, Advocate
11C Examiner Press Building, 1st floor,
Dalal Street, Kala Ghokda, Fort, Mumbai 400 001
Contact No.022 22650121.

[G. S. KULKARNI, J.]