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

COMMERCIAL ARBITRATION PETITION NO.235 OF 2019

Vinod Kumar Agarwal	..Petitioner
Vs.	
Shreeniwas Cotton Mills Ltd. & Anr.	..Respondents

**WITH
COMMERCIAL ARBITRATION APPLICATION NO.35 OF 2019**

Vinod Kumar Agarwal	..Applicant
Vs.	
Shreeniwas Cotton Mills Ltd.	..Respondent

Mr.Shyam Kapadia with Mr.S.B. Pawar, Ms.Gauri Joshi i/b. S.K. Legal Associates for Petitioner/Applicant.

Mr.Rohan Cama i/b. Mr.Akshay Pore for Respondent No.1.

Mr.Shakib Dhorajiwala i/b. Vidhi Partners for Respondent No.2.

CORAM : G.S. KULKARNI, J.

DATE : 2nd APRIL, 2019

P.C.:

1. Commercial Arbitration Petition No.235 of 2019 is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby the petitioner has prayed for interim reliefs pending the arbitral proceedings.

2. Commercial Arbitration Application No.35 of 2019 has been filed by the petitioner under Section 11 of the ACA for appointment of an

arbitral tribunal to adjudicate the disputes and differences between the parties which have arisen under the agreement for sale dated 19 May 2011 executed between the petitioner and respondent No.1. It is not in dispute between the parties that there is arbitration agreement between the parties as contained in clause No.24 of the said agreement. The petitioner by his Advocate's letter dated 22 June 2018 had invoked the arbitration agreement nominating the learned sole arbitrator and requested the respondent No.1 for making reference of the disputes to be adjudicated by the learned sole arbitrator.

3. The Court had heard section 9 petition from time to time. It was heard for some time today. Section 9 petition is filed by the petitioner on 26 October 2018 and since then it had remained pending adjudication. It so transpires that respondent No.1 by its Advocate's letter dated 1 April 2019 had accepted the request as made on behalf of the petitioner for disputes being referred to a sole arbitrator.

4. On this backdrop, after these proceedings were taken up for hearing, learned Counsel for the parties are agreeable that now as the parties have agreed for the disputes being referred for adjudication by a sole arbitrator, this petition filed under Section 9 of the ACA can also be referred for adjudication, as an application under Section 17 of the ACA

by the arbitral tribunal. The learned Counsel for the parties have agreed that Mr.Farhan Dubhash, Advocate of this Court be appointed as an arbitrator.

5. In view of the above consensus between the parties, these proceedings are required to be disposed of. Hence, the following order:-

ORDER

- (i) Mr.Farhan Dubhash, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the agreement for sale dated 19 May 2011 executed between the petitioner and respondent No.1;
- (ii) The learned sole 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 Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of the petition and the application with a copy to be forwarded to both the parties;
- (iii) Commercial Arbitration Petition No.235 of 2019 filed under Section 9 of the ACA alongwith the pleadings is permitted to be converted and treated as an application under Section 17 of the ACA to be adjudicated by the arbitral tribunal;
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) All contentions of the parties on merits of the disputes as also on the Section 17 application are expressly kept open;
- (vi) The learned arbitral tribunal shall decide the Section 17

application as expeditiously as possible and preferably within a period of two weeks from the said application being filed.

(vii) The above application under Section 11 of the ACA as also Section 9 petition are disposed of in the above terms. No costs.

(viii) Office to forward a copy of this order to the learned Arbitrator on the following address:

address: 105, Bhagyoday, 1st Floor, 79, N.M. Road,
Nagindas Master Road, Fort, Mumbai-400 023.

6. At this stage, Mr.Cama, learned Counsel for respondent No.1 submits that a letter dated 1 April 2019 of the respondent No.1 be treated as an invocation notice of respondent No.1 for the purposes of any counter-claim as may be prayed by respondent No.1.

7. Needless to observe that all contentions of the respondent No.2-bank are expressly kept open.

[G.S. KULKARNI, J.]