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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.1375 OF 2018

Capital First Limited	..Petitioner
V/s.	
Decimus Financial Ltd. & Anr.	..Respondents

Mr.Rohan Cama with Ms.Priyanka Manghat i/b. Naik Naik & Co. for
Petitioner/Applicant.

Mr.Rahul Kadam for Respondent Nos.1 & 2.

CORAM : G.S. KULKARNI, J.

DATE : 22nd FEBRUARY, 2019

P.C.:

Heard Mr.Cama, learned Counsel for the petitioner and
Mr.Kadam, learned Counsel for the respondent Nos.1 and 2.

2. This is a petition 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. The case of the petitioner is that the disputes and differences have arisen between the parties under the Facility Agreement dated 27 September 2017 and Deed of Personal Guarantee dated 27 September 2017. This Court by an order dated 2 November 2018 has granted ad-interim reliefs to the

petitioner in terms of prayer clauses (a)(i) and (a)(ii) which read thus:-

“(a) That pending the hearing and final disposal of the Arbitration proceedings and making and implementation of the Award therein, this Court be pleased to :

(i) Direct Respondent No. 1 and 2 to disclose on Affidavit within such time as this Court may deem fit and proper, the particulars of all their respective assets and properties (immovable, movable, tangible and / or intangible), bank accounts including list of loans advanced by Respondent No. 1 details of properties hypothecated / mortgaged and details of amounts pre-paid and receivables under such loans the hypothecated property mentioned in Exhibit-D along with details such as may be necessary including the nature of Respondents' interest in such properties, location, boundaries, size, share and documents of ownership of the Respondents in such assets and properties.

(ii) Appoint the Court Receiver of this Court or any other such fit and proper person as a Court Receiver on all of Respondent No. 1 and 2's assets and properties including the hypothecated property (set out in Exhibit-D) and all properties including bank accounts which belong, may hereinafter be acquired, disclosed or made available to the Respondents with all powers under Order XL of the Code of Civil Procedure including the power to take possession of and sell the same, realize the sale proceeds thereof and pay over the sale proceeds to the Petitioner in or towards the satisfaction of the amounts claimed herein; as per Particulars of Claim, being Exhibit-S hereto and all other claims made in arbitration.”

3. The ad-interim relief so granted continues to operate till date. It is on this background that the petition is listed before this Court today. Mr.Kadam represents respondent Nos.1 and 2.

4. After this petition was heard for sometime, learned Counsel for the parties are agreeable that the disputes and differences between the parties can be referred for arbitration of a sole arbitrator.

5. Mr.Cama, learned Counsel for the petitioner would also submit that in that event the present petition filed under Section 9 of the ACA can also be converted into an application under Section 17 of the ACA to be adjudicated by the arbitral tribunal. The suggestion of Mr.Cama is quite fair and is required to be accepted.

6. In view of the consensus of the parties that the disputes be referred to the arbitral tribunal and considering the submissions of Mr.Cama, this petition can be conveniently disposed of. Hence, the following order:-

ORDER

- i. By consent of the parties, Mr. Justice R.M. Sawant (Retd.) is appointed as a sole arbitrator to adjudicate the disputes and differences between the parties as arisen under the Facility Agreement dated 27 September 2017 as also the Deed of Personal Guarantee dated 27 September 2017;
- ii. The learned sole 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;
- iii. The petitioner is permitted to convert the petition under Section 9 of the ACA into an application under Section 17 of the ACA to be adjudicated by the arbitral tribunal.

- iv. The ad-interim order dated 2 November 2018 is required to be continued and it is continued to operate till the application under Section 17 of the ACA is decided and for a further period of four weeks thereafter.
- v. Depending on the orders which may be passed by the arbitral tribunal on the Section 17 application, liberty to the parties to seek such appropriate orders in regard to the Court Receiver as appointed by this Court by the ad-interim order dated 2 November 2018.
- vi. All contentions of the parties on all the issues including the interim application are expressly kept open.
- vii. The parties shall at the first instance shall appear before the learned sole arbitrator within 15 days from today on a date which may be mutually fixed in consultation with the learned prospective arbitrator.
- viii. The petition is disposed of in the above terms. No costs.
- ix. Office to forward a copy of this order to the learned prospective Arbitrator on the following address:

Address: Chamber Unit No.32, 3rd Floor, Shanti Building, 6,
Banaji Street, Fort, Mumbai-400 001.

[G.S. KULKARNI, J.]