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

COMMERCIAL ARBITRATION PETITION NO.206 OF 2019

Tata Capital Financial Services Ltd.	..Petitioner
Vs.	
McNally Bharat Engineering Company Ltd.	..Respondent

Mr.Karl Tamboly with Ms.Sanaya Dadachanji and Mr.Rohit Lalwani i/b.
M/s.Manilal Kher Ambalal & Co. for Petitioner.
Dr.Birendra Saraf with Mr.Vikrant Zunjarrao, Mr.Rohan Bangar i/b.
M/s.Zunjarrao & Co. for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 20th MARCH, 2019

P.C.:

Heard learned Counsel for the petitioner and learned Counsel for the respondent.

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.

3. On 20 December 2018 this Court heard the parties and passed an ad-interim order recording the statement as made on behalf of the respondent. The said order reads thus:-

“1. Dr.Saraf, learned Counsel for the respondent states that there is a possibility that the disputes between the parties can be resolved. He submits that upto September, 2018 payment of Rs.50 crores has been made by the respondent. As to how the balance amount would be paid is what the respondent would consider/negotiate with the

petitioner. The suggestion of Dr.Saraf is acceptable to the learned Counsel for the petitioner. He however submits that in the meantime some protection be granted to the petitioner in respect of the specified shares at "Exhibit OO" which were proposed to be pledged.

2. The course of action as suggested by the parties is quite reasonable considering the stage of the proceedings and before the matter is taken up for adjudication.

3. Accordingly stand over to 10 January 2019.

4. In the meantime, the respondent shall not deal with the specified shares as described in Exhibit OO (page 274 of the paperbook), without fifteen days notice to the Advocates for the petitioners.

5. Dr.Saraf, learned Counsel for the respondent also makes statement that if any board meeting is proposed to be held to take any decision in respect of amalgamation, then a fifteen days notice intimating the same to the petitioner shall be issued by the respondent. Statements are accepted.

6. Needless to observe that the above statements as made on behalf of the respondent are without prejudice to the rights and contentions of the respondent. In any event contentions of the parties on merits of the matter are expressly kept open."

4. On the above background when the petition was taken up for hearing today and more particularly considering the provisions of Sub-Section (2) of Section 9 of the ACA and that when already ad-interim protection was granted on 20 December 2018, this Court finds it appropriate that the parties are referred to arbitration for adjudication of the disputes and differences arising between the parties under the sanction letter dated 30 November 2012, subscription agreement dated 28 February 2013 and non-disposal undertaking cum agreement to pledge dated 28 February 2013. There is no dispute in regard to the arbitration agreement between the parties.

5. After this petition was heard for sometime, learned Counsel for the parties are also agreeable that the disputes between the parties be referred to arbitration as also the present petition as filed under Section

9 of the ACA be treated as an application under Section 17 of the ACA to be adjudicated by the arbitral tribunal including the pleadings which are filed in this petition.

6. In view of the above consensus, this petition can be disposed of. Hence, the following order:-

ORDER

- (i) Mr. Sharan Jagtiani, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the sanction letter dated 30 November 2012, subscription agreement dated 28 February 2013 and non-disposal undertaking cum agreement to pledge dated 28 February 2013;
- (ii) The learned prospective 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) This petition filed under Section 9 of the ACA along with the pleadings filed shall be treated as an application under Section 17 of the ACA to be adjudicated by the learned arbitral tribunal;
- (iv) The arbitral tribunal shall endeavour to decide Section 17 application as expeditiously as possible and preferably within a period of 6 weeks from the date of entering reference.
- (v) The ad-interim order passed by this Court on 20 December 2018 shall continue to operate till the Section 17 application is decided by the arbitral tribunal with a modification that the “15 days notice” as recorded in paragraph 4 of the said order, now shall be read as “30 days notice”.
- (vi) 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;

(vii) Needless to observe that if the petitioner intends to seek any other urgent appropriate reliefs, the petitioner is at liberty to make an additional application under Section 17 of the ACA and request the arbitral tribunal to pass such appropriate urgent order, if so necessary.

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

(x) The petition is accordingly disposed of in the above terms. No costs.

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

address: Oval House, Ground Floor, British Hotel Lane,
Off. Nagindas Master Road, Fort, Mumbai-400001.

Contact No. 9821113502 / 022-22654063.

[G.S. KULKARNI, J.]