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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION APPLICATION (L) NO. 92 OF 2020**

Prasanna Developers & Ors	...Applicants
<i>Versus</i>	
High Seas Properties Pvt Ltd	...Respondent

Ms Shruti Tulpule, for the Applicants.
Dr B Saraf, Senior Advocate, with Yakshay Chheda, i/b Parinam
Law Associates, for the Respondent.

CORAM: G.S. PATEL, J.
DATED: 2nd March 2020

PC:-

1. It is not necessary to go into the extremely peculiar facts and circumstances of this case where almost every arbitrator nominated by either side recused or was actively encouraged to recuse. The disputes arise under a Development Agreement dated 10th March 2010. It has the following provision for arbitration in Clause 34 at page 47:

“34. In case of any dispute or difference arising out of this Agreement, either party may as soon as reasonably practicable, give to the other party notice in writing of the existence of such question, dispute or difference, specifying its nature and the point of issue. If the parties cannot

resolve the matter by reaching a mutually acceptable solution within 7 business days, the said dispute of differences shall be finally be referred to and settled by arbitration under the provisions of the Arbitration and Conciliation Act, 1996 or any re-enactments or modifications thereof. In the event, the parties are unable to resolve their dispute as stated herein above, the disputes are to be settled by arbitration and for the said purposes, each party shall nominate one arbitrator within 7 days from the expiry of the 7 days period mentioned above. If either party fails to nominate an arbitrator within such period, the arbitrator who is chosen shall have the right to pick up a second arbitrator with 7 business days. The Arbitrators nominated by each party shall have a meeting and within 7 days from their nomination appoint an umpire and the three (3) arbitrators shall constitute an arbitration tribunal (the "Arbitration Tribunal"). The Arbitration Tribunal so constituted shall enter upon the reference immediately and shall within 60 days from its constitution, pass the final award. The time of 60 days herein contemplated may be extended by mutual consent of all the parties in writing. The venue of arbitration shall be at Pune, and the arbitration proceedings shall be carried out in English language only. The arbitration decision shall be final and irrevocable and the decision shall also determine the expenses of the arbitration and the party which shall bear them or the proportion of such expenses to be borne by each party. The Arbitration shall be carried out as per the provisions of the Arbitration and Conciliation Act, 1996 or any re-enactments or modifications thereof. In any event during the continuance of the arbitration, the First Party shall not be entitled to stop operation of banking account of the Second Party or the development and construction work and generally work of the scheme and this is essential term of this agreement."

2. The clause provides for a reference to a three-member tribunal. Attempts even to constitute this tribunal have been spectacularly unsuccessful, and, therefore, the parties now request the intervention of the Court. They also jointly agree that the reference should be to a sole arbitrator.

3. I will exercise my discretion and appoint Mr Surel Shah, Advocate of this Court, to decide the disputes and differences arising between the parties under Development Agreement dated 10th March 2010. Both sides consent to his appointment.

(a) **Appointment of Arbitrator:** By consent, Mr Surel Shah, Advocate of this Court, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under Development Agreement dated 10th March 2010.

(b) **Communication to Arbitrator of this order:**

- (i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded.
- (ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator/s Mr Surel Shah, Advocate.

Address Office No. 2-3, Ground Floor,
Doshi Shoppe, Link Road, Opp.
Dosti Acres, Wadala (East)
Mumbai 400 037

Mobile 98211 45720

Email surelshah@yahoo.co.in

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Registry of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently before entering upon the reference to arbitration. That statement will be retained by the Registry on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.

- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.
 - (ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
- (h) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (i) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (j) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.

(k) Venue and seat of arbitration: Parties agree that the seat of the arbitration will be in Pune. However, if the learned Sole Arbitrator so wishes, the parties will not unreasonably object to some hearings being held at a venue in Mumbai for convenience, particularly for procedural matters.

4. The application is disposed of in these terms. No costs.

(G. S. PATEL, J)