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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION (L) NO. 422 OF 2020**

Mahesh Nanji Thakkar & Anr	...Petitioners
<i>Versus</i>	
Bipin Jivandas Sampat	...Respondent

**Mr Vivek Kantawala, with Amey Patil, Arpit Solanki, & Siddharth
Bafna, i/b Vivek Kantawala & Co, for the Petitioner.
Ms Rathore, for the Respondent. (appearance not given)**

**CORAM: G.S. PATEL, J
(Through Video Conference)
DATED: 1st October 2020**

PC:-

1. Heard through video conferencing.

2. On instructions Mr Kantawala states that he is prepared to press the present Section 9 Petition as an application under Section 17 before the learned sole Arbitrator to be appointed by this Court. Having taken instructions, Ms Rathore for the Respondents states that her statement made on 4th September 2020 will continue until the disposal of Section 17 application. Both parties request leave the name of the Arbitrator to the Court. Although they have suggested the name of Mr Vishal Kanade, learned Advocate of this Court, I take

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taking the liberty of providing an alternate since I am not certain that Mr Kanade will be able to enter upon the reference to his arbitration.

3. Accordingly, the disputes and differences between the parties arising from the Memorandum of Understanding dated 25th May 2010 are referred to the sole arbitration of Mr Vishal Kanade, learned Advocate of this Court. Failing him, the disputes and differences between the parties will be referred to Mr Shyam Kapadia, learned Advocate of this Court. For convenience, the contact details of both the Advocates are given below in this order. The relevant arbitration clause is clause 12.3.2. A copy of the Memorandum of Understanding is annexed at Exhibit 'D' at Volume 12 of the soft copy filings.

(a) **Appointment of Arbitrator:** By consent, Mr Vishal Kanade, learned Advocate of this Court, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties arising from the Memorandum of Understanding dated 25th May 2010; and, failing him, Mr Shyam Kapadia is to be the sole arbitrator.

(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	Mr Vishal Kanade, Advocate
Address	103 Gundecha Chambers Nagindas Master Road (Opposite Theobroma) Mumbai 400 001
Mobile	+91 98196 68711
Email	kanade.vishal@gmail.com

ALTERNATIVELY:

Arbitrator	Mr Shyam Kapadia, Advocate
Address	2nd Floor, Wadia Building Dalal Street, Fort Mumbai 400 001
Mobile	+91 98208 24262
Email	shyam.a.kapadia@gmail.com

- (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 Prothonotary and Senior Master 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 Prothonotary & Senior Master 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. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii) The present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the

Section 17 application. The Respondents will be entitled to file an Affidavit in Reply before the learned sole Arbitrator (there is no Affidavit in Reply as yet in the Section 9 Petition since Ms Rathod has had some difficulty in getting instructions and completing that task).

- (iii) Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.
- (iv) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (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 venue and seat of the arbitration will be in Mumbai.

4. The statement made by Ms Rathod in paragraph 3 of the order dated 4th September 2020 will continue until the disposal of Section 17 Application.

5. I will extend time for Ms Rathore for filing her vakalatnama in view of the difficulty she is facing because of her clients ill-health. That vakalatnama is to be filed within four weeks from today.

6. The Section 9 Petition is disposed of in these terms. There will be no order as to costs.

7. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(G. S. PATEL, J)