

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 34 OF 2020
WITH
ARBITRATION PETITION (L) NO. 295 OF 2020
WITH
ARBITRATION APPLICATION NO. ____ OF 2020
WITH
ARBITRATION APPLICATION (L) NO. ____ OF 2020
WITH
INTERIM APPLICATION NO. 1 OF 2020
IN
COMM ARBITRATION PETITION NO. 34 OF 2020
(To be renumbered subsequently)**

Ami Corporation	...Petitioner
<i>Versus</i>	
Mitraprem CHS Ltd	...Respondent

Mr GS Godbole, with Darshit jain, Dilip Satale, & Vikas Saindane,
for the Petitioner.
Mr Kunal Bhanage, for the Respondent.

CORAM: G.S. PATEL, J
(Through Video Conference)
DATED: 4th September 2020

Shephali
Mormare

Digitally signed
by Shephali
Mormare
Date: 2020.09.06
12:41:19 +0530

PC:-

1. Heard through video conferencing.
2. There are five matters. Two are Petitions under Section 9 of the Arbitration and Conciliation Act 1996. These are Commercial Arbitration Petition No. 34 of 2020 (“**Contractor Agreement Petition**”) and Arbitration Petition (L) No. 295 of 2020 (“**Lease Agreement Petition**”). In each, there is an accompanying Section 11 application. The fifth matter is the Petitioner’s Interim Application for an order against various respondents for perjury. In the Contractor Agreement Petition, ad-interim reliefs were earlier refused. There are replies in all matters.
3. After some discussion in Court, both sides are agreeable to the appointment of Mr Mukesh Vashi, learned senior counsel of this Court, as a sole Arbitrator to separately decide the disputes and differences between the parties arising from a Contractor Agreement dated 13th June 2010 read with the Modification-cum-Supplemental Agreement dated 1st June 2017; and the Agreement for Lease/Memorandum of Understanding dated 13th June 2010. Of necessity, there will be two references to Mr Vashi’s arbitration. These may be heard together for convenience but it is clear that there being separate sets of agreements — one for the contractor work and the other for the lease — there will in fact be two separate references.
4. Hence the following order:

(a) **Appointment of Arbitrator:** By consent, Mr Mukesh Vashi, learned Senior Advocate of this Court, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under Contractor Agreement dated 13th June 2010 read with the Modification-cum-Supplemental Agreement dated 1st June 2017; and the Agreement for Lease/Memorandum of Understanding dated 13th June 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 Mukesh Vashi,
Senior Advocate

Address 63, Jalaram Jyot, 2nd Floor,
Janmabhoomi Marg, Fort
Mumbai 400001

Mobile +91 98200 22987

Email mpvashiassociates@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 two Petitions under Section 9 of the Arbitration Act will also 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.
- (iii) Liberty to both sides 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.

5. All contentions in the arbitral proceedings are kept open. I have made no assessment on merits.

6. In the Lease Agreement Arbitration Petition a statement was made on 2nd March 2020 that the Respondent would not act on the lease termination until one day after next date of hearing. This statement will continue for a period of six weeks from today by which time the Petitioner must make the necessary application for an extension of the statement or an order in those terms before the learned sole Arbitrator.

7. So far as the Perjury Interim Application is concerned, Mr Godbole has instructions to withdraw this with liberty to file a fresh should the occasion arise and if so advised. I am making it clear that I am permitting this withdrawal without any assessment on merits. Consequently all contentions as to perjury are also expressly kept open. It is equally clear that the question of perjury cannot be decided

in Arbitration and, by way of abundant caution it is made clear that there is no reference to arbitration in regard to the allegations of perjury made by the Petitioner.

8. This order will thus dispose of all five matters.

9. The Application and Petitions are disposed of in these terms.
No costs.

10. 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)