

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 37 OF 2020**

Relcon Infraprojects Ltd ...Petitioner
Versus
Shailesh Vihar Cooperative Housing Society Ltd ...Respondent

Mr Cyrus Ardeshir, *with Ms Gargi Bhagwat, i/b Divekar & Co, for the Petitioner.*
Mr Mayur Khandeparkar, *with SD Mishra and AR Shaikh, i/b ASD Associates, for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 4th March 2021

PC:-

ARUN
RAMCHANDRA
SANKPAL

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1. Mr Ardeshir states that he will press his Section 9 Petition as an Application under Section 17. There is a Development Agreement dated 23rd December 2014, and a Supplementary Development Agreement dated 29th March 2016; there is an arbitration provision at Clause 90 of the former. It contemplates an arbitration in Mumbai, before a sole Arbitrator, if agreed on by the parties. Both sides agree that the nomination of the Arbitrator may be left to the Court.

2. In fact parties are agreed on the appointment of Mr Vishal Kanade, learned Advocate of this Court, as a sole Arbitrator to

decide the disputes between the parties arising from the Development Agreement dated 23rd December 2014, and the Supplementary Development Agreement dated 29th March 2016.

3. Mr Kanade is requested to dispose of the Section 17 Application at his earliest convenience and, if possible, by 17th May 2021.

TERMS OF APPOINTMENT

- (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 under the Development Agreement dated 23rd December 2014 and Supplementary Development Agreement dated 29th March 2016.
- (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 Petitioner within one week from the date this order is uploaded.
 - (ii) The Advocates for the Petitioner 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 19, Examiner Press Building
2nd floor
C/o Jovial Associates Chamber
Dalal Street
Fort
Mumbai.

Mobile 9819668711

Email vishal8383@yahoo.com
kanade.vishal@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioners will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the Registry.
- (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. The information is to include functional email addresses and mobile numbers.

- (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. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.
 - (iii) 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.
- (l) **Procedure:** These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

4. The Arbitration Petition is disposed of in these terms. Liberty to the parties to seek the costs of this Petition as costs in arbitration.

5. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)