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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO. 17 OF 2024

M/s. Tharwani Realty Through its proprietor

Anil Hardas Tharwani

..Petitioner

Vs.

M/s. Shruti Associates through its partner

Shri Veersen Premji Wadia and anr.

.. Respondents

Mr. Anilkumar K. Patil, for the Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 29th JULY, 2024

P.C.:-

1. The present Petition is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 ("the said Act", for short). The Respondents though served, have not appeared today. Learned Counsel invites my attention to a Memorandum of Understanding dated 27th September 2010 entered into between the Petitioner and the Respondent Nos. 1 and 2 from which he points out arbitration clause 14. He also invites my attention to the notice invoking the arbitration which is dated 27th July 2013 which he points out the Respondents have by their reply dated 23rd August 2013 responded by stating that they would be willing to refer the dispute to arbitrator. It is thus he submits that the present application be allowed.

2. After hearing Learned Counsel, qua perusing the documents on record, I am satisfied that an Arbitration Agreement between the parties exists. Also, none has appeared on behalf of the Respondents to oppose the Petition or deny the existence of the Arbitration Agreement. In view thereof, I find sufficient cause is made out for appointment of arbitrator. Hence, the Petition is allowed in terms of prayer clause (a) which reads thus :

“(a) : That this Hon'ble Court be pleased to appoint any fit and proper person as deemed fit by this Hon'ble Court as Sole Arbitrator to adjudicate on the outstanding disputes and differences between the parties hereto as more particularly set out herein .”

3. At this stage, Learned Counsel submits that the arbitration is to be held in Thane District, therefore, requests that arbitrator from that area be appointed.

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator: Shri Sadashiv S. Deshmukh is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under Section 11(6) of the said Act.

(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 Shri Sadashiv S. Deshmukh

Address 403, Jupiter, Building No. 9,
(Gavand baug), Pokhran Road
No.2, Thane (West),
Thane 400 610

Mobile 9820553525

- (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 Petitioner 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) 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 learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.

(g) Fees: The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

(h) 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.

(i) 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.

(j) Venue and seat of arbitration: Parties agree that the venue and seat of the arbitration will be in Thane.

5. The Petition is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J.)