

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.339 OF 2024

WITH

ARBITRATION APPLICATION (L) NO.16101 OF 2024

Premier Textile Processors ...Petitioner

Versus

Shree Naman Developers Pvt. Ltd. & Ors. ...Respondents

Mr. J. P. Cama, Senior Advocate a/w. Mr. Ameet Mehta, Mr. Aditya Bhatt, Mr. Nirav Marjadi, Ms. Srushti Mehta, Ms. Rebha Dogra, Mr. Parth Turakhia and Mr. Kushal Harnesha, Advocates, i/b. Solicis Lex, for the Petitioner.

Mr. Ashish Kamat, Senior Advocate a/w. Mr. Aman Sadiwala, Advocate, i/b. M/s. Rashmikanth and Partners, for the Respondent Nos.1 to 4.

Mr. Rubin Vakil a/w. Ms. Sonam Mhatre, Ms. Saloni Sulakhe, Advocates, i/b. Dhaval Vussonji & Associates, for the Respondent Nos.6 and 8.

CORAM: MADHAV J. JAMDAR, J.

DATED : 14th OCTOBER 2024

P. C.:

1. At the outset, Mr. Cama, learned Counsel appearing for the Applicant/Petitioner seeks deletion of other Respondents except Respondent No.1 from array of the parties. Accordingly, leave as prayed is granted. Amendment be carried out forthwith. Re-verification is dispensed with.

2. Arbitration Application (L) No.16101 of 2024 is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“**the said Act**”) and Arbitration Petition No.339 of 2024 has been filed under Section 9 of the said Act.

3. The Applicant i.e. Premier Textile Processors are the owners of land at village Marol, Mumbai Suburban District Taluka, South Salsette, Registration Sub-district Bandra, District Mumbai more particularly set out in paragraph No.1 of the Arbitration Application (L) No.16101 of 2024.

4. It is the case of the Applicant that the Respondent – M/s Shree Naman Developers Pvt. Ltd. in the year 2010 approached the Applicant with a proposal of the development of the said land. Accordingly, the Development Agreement dated 27th December 2010 has been executed between the Applicant and the Respondent No.1. There are certain disputes between the parties concerning said Development Agreement. The said Development Agreement provides for appointment of Arbitrator in Clause No.30, which reads as under:

*“32. The Applicant submits that as per **Clause 30** of the said DA, the parties are entitled to invoke arbitration in case of dispute as, which has been reproduced below,:*

“30. At anytime any difference shall arise between parties hereto in regard to the said plot or in regard to the construction or interpretation of the said. clauses herein contained or any decision, act or thing to be made in pursuance hereof or any other matter or thing relating to the said project or the affairs hereto as also any question of law arising the same shall be referred to the two arbitrators one to be appointed by each party, and the two arbitrators shall appoint a third arbitrator before or upon the reference any every such reference shall be deemed and arbitration within the meaning of 'Arbitration and Conciliation Act 1996 and be subject to the provisions as to arbitration contained in the said act including an A amendment or modification or reenactment thereof.”

The Arbitration Clause provides that arbitration is to be by two arbitrators one to be appointed by each party, and the two arbitrators shall appoint a third arbitrator.

5. Mr. Cama, learned Senior Counsel appearing for the Applicant and Mr. Kamat, learned Senior Counsel appearing for the Respondent state that the Sole Arbitrator be appointed. They have also agreed that Sole Arbitrator to be appointed would be Mr. Justice Akil Kureshi, Former Chief Justice, Rajasthan High Court.

6. Both the learned Senior Counsel state that Arbitration Petition No.339 of 2024 filed under Section 9 of the said Act be considered as Application under Section 17 of the said Act before the learned Sole Arbitrator.

7. Accordingly, the following order is passed:

ORDER

- (a) By consent of parties, Mr. Justice Akil Kureshi, a retired Chief Justice of the Rajasthan High Court, is hereby appointed to act as a Sole Arbitrator to decide the disputes and differences between the Petitioner and the Respondents arising out of and/or in connection with and/or in relation to the Development Agreement dated 27th December 2010 **as well as Supplemental Agreement dated 21st July 2017.**
- (b) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today.
- (c) The learned Sole Arbitrator is requested to forward his Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the

Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondents.

- (d) The parties shall appear before the learned Sole Arbitrator on such date and such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.
- (e) Contact and communication particulars shall be provided by both sides to the learned Sole Arbitrator within a period of one week from today. This information shall include a valid and functional email address as well as mobile numbers of the respective Advocates.
- (f) The parties have further agreed that all arbitral costs and fees of the Arbitrator shall be borne by the Petitioner on the one hand and Respondent on the other, equally, and will be subject to the final Award that may be passed by the Tribunal.

8. The above Section 9 Petition shall be treated, heard and disposed of by the Arbitral Tribunal as an Application under Section 17 of the Arbitration Act. All affidavits, if any filed in the above Section 9 Petition shall be treated as affidavits filed in the Section 17 Application. If any party wants to file any further affidavit, it may do so, with the leave of the Arbitral Tribunal

9. Accordingly, the Arbitration Petition and Arbitration Application are disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]

Note: This order is modified as per Speaking to the Minutes order dated 21st October 2024. The corrections are shown in bold in paragraph No.7(a).

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