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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPLICATION NO. 96 OF 2024

Rohit Bhalwankar ...Applicant

Versus

IVY Realtors and Valuers LLP ...Respondent

Mr Rushabh Sheth, with *Mansi Jain, Rajshree Dhole & Pratibha
Rupnawar, i/b Samatva Legal Associates, for the Applicant.*

Ms Praneeta P Mokul, i/b *Krishna Thacker, for Respondents Nos.1 & 2.*

CORAM: ARIF S. DOCTOR, J

DATED: 15th July 2024

PC:-

1. Today, Mr Sheth, Learned Counsel appearing on behalf of the Applicant tenders a draft amendment seeking to add names of the partners of the 1st and 2nd Respondents who, he submits are the partners both of partnership firms.

2. Learned Counsel appearing on behalf of Respondents Nos. 1 and 2 does not oppose the amendment.

3. Hence, the amendments are allowed in terms of the draft, handed in and marked "X" for identification with today's date. Amendments are to be carried out by 5.00 pm on 18th July 2024, without need of reverification.

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4. This Application is under Section 11 of the Arbitration and Conciliation Act 1996 for an appointment of an Arbitrator in respect of the disputes and differences which have been arisen between the parties out of Project Management Consultant Contract. The contract is annexed to the Petition at page 51. I have perused the same and find that the same is entered into between the Applicant and both Respondents. The arbitration clause is at page 60 of the Application, which reads thus:

“If any dispute arises with respect of all or any provisions of this contract, the same shall be resolved by the parties themselves in good faith, failing which the parties will mutually appoint a sole arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996 subject to any amendments and modifications, if any. The place and seat of arbitration shall be Mumbai. The language of the arbitration shall be English. The award pass by the arbitrator shall be binding on the parties. The courts in Mumbai shall have exclusive jurisdiction.”

5. Learned Counsel for the Applicant has invited by attention to the letter of invocation which is dated 26th April 2023. He points out that the Respondents have not disputed or challenged the existence of the Arbitration Agreement or raised any objection that the disputes are not non-arbitral. The only issue the parties are at variance is the name of the Arbitrator to be appointed. Learned Counsel for the Respondent not disputed these facts. No Reply has been filed. Hence, prima facie I am satisfied that the agreement which indicates the arbitration clause has been executed between the parties and the Applicant has invoked arbitration. Learned Counsel appearing on behalf of the Applicant submits that given the claim would be of technical nature, the Arbitrator be appointed who has sufficient technical background. It is in these circumstances, I deem it fit to appoint Mr Rubin Vakil,

Advocate, as a Sole Arbitrator, to decide the disputes and differences between the parties on the following terms and conditions.

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr Rubin Vakil, Advocate, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under the Project Management Consultant Contract.

(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) The Advocates for the Applicant will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses.

Arbitrator **Mr Rubin Vakil, Advocate**

Address 402, Hamam House,
Ambalal Doshi Marg, Fort,
Mumbai 400 001

Mobile 98201 88015

Email rubinrvakil@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 Applicant 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 Mumbai.
6. The application is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J)