

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 258 OF 2024

M S Enterprises

...Petitioner

Vs.

Kannamwar Nagar 2 Grahak Sahakari

Bhandar Maryadit & Ors.

...Respondents

WITH
COMMERCIAL ARBITRATION APPLICATION NO. 117 OF 2024

Adv. Y. C. Naidu a/w Eden Ribeiro i/by Sapna Krishnappa for the Petitioner.

Adv. Mayur Khandeparkar a/w Amrut Joshi i/by Nitin Parkhe for the
Respondents.

CORAM : ARIF S. DOCTOR, J.

DATE : 20TH AUGUST, 2024

P.C.-

1. There are two matters on board today. One is Commercial Arbitration Petition No.258 of 2024 filed under Section 9 of the Arbitration and Conciliation Act, 1996 and the other is Commercial Arbitration Application No.117 of 2024 filed under Section 11 of the Arbitration and Conciliation Act, 1996.

2. When the matter was called, Mr. Khandeparkar, Learned Counsel appearing on behalf of the Respondents very fairly submitted that his clients did

not have any opposition to the appointment of an arbitrator, however, pointed out that the same could be only in respect of the disputes and differences arising between the parties emanating from Development Agreement dated 7th August, 2013, which Development Agreement has been terminated by the Respondents.

3. In light of this, both Learned Counsel called upon the Court to appoint Arbitrator. Hence, given the nature of the disputes, I deem it fit to appoint Mr. Rushabh Sheth to act as Sole Arbitrator to decide disputes and differences arising out of the said Development Agreement on the following terms:-

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr. Rushabh Sheth is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.

(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/s Mr. Rushabh Sheth

Address Chambers of Anoshak Davar,

20th Floor, 1901, One Infinity
(Ramnimi), Cawasji Patel
Street, Above Bangalore
Iyenger's Bakery, Fort, Mumbai
400001.

Mobile 9833200601

Email sheth.rushabh@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) **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.
- (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.

4. It is made clear that all rights and contentions of the parties shall be kept expressly open to be urged before the learned Arbitrator.

5. The Petition and the Application are both disposed of in these terms.

No costs.

(ARIF S. DOCTOR, J.)