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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
(IN ITS COMMERCIAL DIVISION)
COMMERCIAL ARBITRATION APPLICATION NO.101 OF 2024**

Raitan Private Limited

...Applicant

Versus

Tirth Realty & Ors.

..Respondents

Ms. Sakina Electricwala, i/b Dhruve Liladhar & Co, for the Applicant.

Mr. Dhruva Gandhi, i/b Mr. Bharat A. Punekar, for the Respondents.

CORAM Dr. Neela Gokhale, J.

DATED: 14th December 2024

PC:-

1) The Applicant seeks appointment of a Sole Arbitrator to refer the dispute arising out of a Loan Agreement dated 1st August 2016 between the parties. The Applicant vide prayer clause (b), also sought waiver of the requirement of appointment of an Arbitral Tribunal of three Arbitrators as per Clause 39 of the Loan Agreement.

2) By an order dated 25th October 2024, the Applicant was permitted to amend the application in terms of the 'Draft Amendment' within a period of two weeks from the date of the order and serve a copy of the amended application on the Respondents. Although the amendment is not seen to be carried out in the hard copy of the application, today, Ms. Sakina Electricwala, learned counsel appearing for the Applicant states that she has carried out the amendment online and also e-filed amended copy of the application. The learned counsel is also permitted to place on record hard copy of the amended application in the Registry.

3) The amendment is in respect of prayer clause 9(a). The Arbitration Clause originally provided for appointment of an Arbitral Tribunal of three Arbitrators but the prayer clause in the original application sought appointment of a Sole Arbitrator and it is in this regard that the prayer clause was permitted to be amended.

4) Be that as it may, today, learned counsels appearing for both the parties have consented for

appointment of a Sole Arbitrator to adjudicate the dispute between the parties.

5) The dispute arises out of the Loan Agreement dated 1st August 2016 executed by and between the parties. Paragraph 39 of the Loan Agreement provides for reference of any dispute to arbitration. Paragraph 39 of it reads as thus:

“39. Dispute Resolution

Any dispute arising out of or in connection with this Loan Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) shall be referred to and finally resolved by arbitration in accordance with the Arbitration and Conciliation Act 1996. The Arbitration proceedings shall be conducted by a panel consisting of three arbitrators. One arbitrator shall be appointed by the Borrower, and one arbitrator shall be appointed by the Lender. The two appointed arbitrators shall jointly appoint a third arbitrator, who shall be the Chairman of the arbitral panel. The arbitration shall take place in Mumbai and the language of the arbitration shall be English. It is clarified that jurisdiction of the same will be at Mumbai and whose decision shall be final and binding to the parties herein.”

6) Since a dispute arose between the parties, the Applicant by notice dated 16th January 2023 invoked the Arbitration Clause in the Loan Agreement and requested the Respondents to also nominate one Arbitrator of their choice. The Respondents did not reply to the said notice and hence,

the Applicant was constrained to file the present Arbitration Application.

7) Since both the parties have consented to appoint a Sole Arbitrator, the Arbitration Application is disposed of by the following order:

ORDER

1. Ms. Ankita Singhania, Advocate is appointed as a Sole Arbitrator to enter reference and adjudicate the disputes between the parties out of the Loan Agreement dated 1st August 2016. The seat of the arbitration shall be Mumbai as agreed by the parties in the Clause 39 of the agreement.
2. The learned Sole Arbitrator shall forward a statement of disclosure as per the requirement of Section 12(1) of Arbitration and Conciliation Act 1996 to the Prothonotary and Senior Master of this Court to be placed on record of this Application with a copy forwarded to both the parties.
3. At the first instance the parties shall appear before the learned Arbitrator within a period of ten days from the date of uploading of this order or on such date that may be fixed by the Sole Arbitrator.

4. All contentions of the parties on merits of the disputes are expressly left open.
5. The fees payable to the Arbitral Tribunal shall be in accordance with the Bombay High Court (Fee payable to the Arbitrator) Rules, 2018 which shall be borne by the parties in equal proportion.
6. The Application is disposed of in the above terms. There will be no order as to costs.
7. Office to forward a copy of this order to the learned Sole Arbitrator on the following address:

“Ms. Ankita Singhania, Advocate”,
19th Floor, 1 Infinity
Cawasji Patel Street,
Fort,
Mumbai 400 001
Mobile No. ; 98202 70585
Email ID: ankitasinghania@gmail.com

(Dr. Neela Gokhale, J)

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