

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION PETITION NO.292 OF 2024

Touchstone Constructions ... Petitioner

V/s.

Bhanudas Sargar ... Respondent

Mr. Bhavin Gada a/w Hasson Khan for the Petitioner.

Mr. Prakash Kolekar for the Respondent.

CORAM : ARIF S. DOCTOR, J.

DATE : 3RD OCTOBER 2024

P.C. :

1. This is a Petition filed under Section 9 of the Arbitration & Conciliation Act, 1996. After the matter was argued at some length, parties were agreeable to the appointment of an Arbitrator to resolve their disputes and differences which have arisen out of an Agreement of Sale dated 27th February 2024. Therefore, I appoint Mr. Shyam Kapadia to act as a Sole Arbitrator in the matter on the following terms :-

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr. Shyam Kapadia, Advocate, 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 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 **Mr. Shyam Kapadia, Advocate**

Address 2nd Floor, Wadia Building,
Dalal Street, Fort,
Mumbai 400 001.

Mobile 9820824262

Email shyam.a.kapadia@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) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) **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.
- (h) **Fees:** The arbitral tribunal's fees shall not be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (i) **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.
- (j) **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.
- (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

2. All rights and contentions of the parties are expressly kept open.

3. Section 11 Application, which appears to be e-filed, does not survive in view of this order and the same is also disposed of accordingly. Learned Counsel undertakes to ensure that the Application is appropriately numbered.

4. The present order is passed in the presence of representative of the Respondent.
5. The Affidavit in Reply to Section 9 Petition has been filed. Learned Counsel appearing on behalf of the Petitioner seek time to file Affidavit in Rejoinder. The same shall be filed within two weeks from today.
6. Once the pleadings are completed, the Tribunal is requested to dispose of Section 17 Petition as expeditiously as possible, subject to the other commitments that the Tribunal may have in hand.
7. The Petition is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J.)