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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 120 OF 2024

Hoshang Patel and Anr.

...Applicants

Versus

Square Ten Developer

...Respondent

Mr.Yogesh C. Naidu, a/w Mr. Eden Riberio for the Applicant.

None for Respondent .

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 14, 2025

PC :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***). It is seen from the record that on January 9, 2024, a Learned Single Judge of this Court considered the matter when the Learned Counsel for the parties were present and time was given to the Respondent to file a reply at least two days prior to January 30, 2024, to which date, the matter was stood over. Thereafter, the matter was listed on multiple occasions, and eventually was circulated today at the request of the Applicant.

2. Upon review of the record, it is apparent that the agreement dated August 19, 2015, which indeed contains an arbitration agreement in Clause 12, is found at Page No. 53 of the Application. The same is not being extracted herein, in the interest of brevity.

3. It is also seen from the record that arbitration was invoked by the Applicant vide letter dated March 9, 2021 to which there is a reply dated March 27, 2021. There is no denial of the existence of the arbitration agreement in the reply. Being satisfied that the original agreement is indeed in existence, the Application deserves to be finally disposed of in the following terms:-

a) Justice Shri. S.J. Kathawalla, a former Judge of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above. The contact particulars are set out below :

Address : 43, Free Press House, 4th Floor,
215, Free Press Journal Marg,
Nariman Point, Mumbai – 400 021.

Email id : skathawalla@gmail.com

b) A copy of this Order shall be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

c) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the 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 Respondents;

d) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

e) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs; and

f) The parties have agreed that the venue and seat of the arbitration will be in Mumbai. It is clarified that it shall be open to the Arbitral Tribunal to conduct the proceedings online through electronic mode.

4. Learned Counsel for the Applicant also states that a Petition

under Section 9 of the Act being Arbitration Petition (L.) No. 8157 of 2023 seeking interlocutory relief in respect of the subject matter in dispute had been filed. This Petition was dismissed due to non-compliance with office objections by a common order dated March 19, 2024 passed by the Prothonotary and Senior Master of this Court. Regardless, the contents of the Section 9 Petition shall be treated as an Application under Section 17 of the Act by the Arbitral Tribunal.

5. The Application under Section 11 and Petition under Sec 9 of the Act are *finally disposed of* in the aforesaid terms.

6. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]