

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 7 OF 2024**

WITH

COMMERCIAL ARBITRATION APPLICATION NO. 10 OF 2024

Vidyavihar Containers Ltd.

...Petitioner/
Applicant

Versus

Gammon Neelkanth Realty Corporation & Ors

...Respondents

Mr. Pratik Seksaria, Senior Advocate, a/w Eram Quraishi, Rohit Agarwal, & Nishant Chotani, i/b Mehta & P, for Petitioner in 7/2024 & for Applicant in 10/2024.

Mr. Mayur Khandeparkar, a/w Aneehsa Cheema, Parth Jasani, i/b M/s. Purnanand & Co., for Respondent No.1 in both matters.

Mr. Naushad Engineer, Senior Advocate, a/w Sharad Bansal, Murtuza Federal, Rashne Mulla-Feroze, Veer Ashar & Aarooha Kulkarni, i/b Federal & Co., for Respondent No.2.

Mr. Saket Mone, a/w Shrey Shah, Bhupen Garud, i/b Vidhii Partners, for Respondent No.3 in CARBP/7/2024 & for Respondent No.3 CARAP/10/2024.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 21, 2025

PC :

1. Commercial Arbitration Petition No. 7 of 2024 is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) while Commercial Arbitration Petition No.10 of 2024 is an Application

under Section 11 of the Act.

2. Today, when the matter is called out, Learned Counsel for the parties agree that the Section 9 Petition may be treated as an Application under Section 17 of the Act by the arbitral tribunal appointed hereby. The Learned Counsel for Respondent No.2, and partner of Respondent No.1, raises an objection stating the he is the party that has executed a Deed of Indemnity and that instrument does not contain an arbitration clause. Be that as it may, *prima facie*, it is evident that these are instruments executed contemporaneously and appear to be inter-connected, but this is a facet that is exclusively in the domain of the arbitral tribunal to appreciate and comment upon.

3. In these circumstances, Learned Counsel for the parties submit that they have no objection if both the Petitions under Section 9 and the Application under Section 11 of the Act are finally disposed of by appointing a Sole Arbitrator to consider all disputes and differences connected with the Development Agreement dated June 24, 2005 and any connected issues arising therefrom. Since Section 9 Petition is being converted into an Application under Section 17, given the efflux of time, parties are at liberty to supplement and mould the contents of such

Application after approaching the Learned Sole Arbitrator. The parties agree that they shall approach the Learned Sole Arbitrator at a time convenient to him no later than February 3, 2025, who shall issue further instructions on how to proceed further.

4. Since the parties consensus over the identity of the arbitrator as well both the Section 9 Petition and Section 11 Application are hereby *finally disposed of* in the following terms:-

- a) Taking into account inputs from officers of the Court, Justice Tarun Agarwala, former Chief Justice of Meghalaya, 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;
- b) A copy of this Order will 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 Arbitration Act to the parties within a period of two weeks from receipt of a copy of this Order;

- 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.

5. It is made clear that nothing contained in this order is an

expression of an opinion on the merits of the case.

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.]