

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMM. ARBITRATION PETITION NO. 855 OF 2024
ALONGWITH
COMM. ARBITRATION APPLICATION NO. 432 OF 2024

Alkesh B. Malavia Construction ...Petitioner

Versus

Borivali Milton Co-operative Housing Society ...Respondent
Ltd.

Mr. Anoshak Daver, i/b Mr. Dhiren Shah a/w Mr. Mubeen Sirkhot for
the Petitioner/Applicant.

Mr. Anosh Sequeira, a/w Mr. Kayomars Kerawalla i/b Vohuman
Legal for Respondent No.1.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 14, 2025

PC :

1. The Commercial Arbitration Petition No. 855 of 2024 has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) and Commercial Arbitration Application No. 432 of 2024 has been filed under Section 11 of the Act. The disputes and differences between the parties relate to a Development Agreement dated December 31, 2013. It is stated that the arbitration is already invoked and in fact an arbitral tribunal had even been appointed. The Learned Sole Arbitrator who had been appointed had resigned from the mandate which has led to the aforesaid application being filed.

2. Today, when the matter is called out, Learned Counsel representing the Petitioner and Respondent No.1 jointly submit that they are willing to refer disputes and differences between them to be adjudicated by Mr. Bhavin Gada and that such arbitrator may adjudicate all the disputes and differences between the parties arising out of and in connection to the aforesaid agreement. In these circumstances, both these Petitions are finally disposed of in the following terms:-

- a) Mr. Bhavin Gada, an Advocate 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.
- 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 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;.

3. The Petition filed under Section 9 of the Act shall be treated by the Learned Sole Arbitrator as an Application under Section 17 of the Act for consideration of appropriate interlocutory measures pending in the conduct of the arbitration. Given the efflux of time, the parties are free to mould such applications, if any, further.

4. Both the aforesaid Petitions are *finally disposed of* in the aforesaid terms. Needless to say, any Interim Applications connected also stands finally disposed of.

5. Needless to say, that nothing contained in this order is an expression of opinion on 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.]