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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**COMM. ARBITRATION PETITION NO. 773 OF 2024**

Capacite Infraprojects Limited ...Petitioner

***Versus***

Sumer Buildcorp Private Limited ...Respondent

**Mr. Abhishek Tilak** *a/w Mr. Prakalathan Bathey for the Petitioner.*  
**Mr. Ankit Lohia** *a/w Ms. Riya Thakkar i/b Mr. Tushar Goradia for the Respondent.*

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**CORAM : SOMASEKHAR SUNDARESAN, J.**

**DATE : JANUARY 30, 2025**

**PC :**

1. Commercial Arbitration Application No. 404 of 2024 filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“***Section 11 Application***”) came to be disposed of by an order passed by me on January 21, 2025 (for short “***the Act***”). Commercial Arbitration Petition No. 773 of 2024 is a Petition under section 9 of the Act (“***Section 9 Petition***”) relating to the same dispute between the same parties.

2. On January 21, 2025 Justice S.J. Kathawalla, a former judge of this Court, came to be appointed as a sole arbitrator, and the effective date of that order was deferred to January 31, 2025 on the premise that parties were seen to be on the verge of a settlement.

3. Today, when the matter is called out, it is apparent that the parties have not reached a settlement. In these circumstances, considering

that a reasonable period of ten days had been given since the last order, there is no need to defer the effective date of the order disposing of Section 11 Application.

4. The Section 9 Petition shall be treated as an Application under Section 17 of the Act, by the learned Arbitral Tribunal appointed on the last occasion. Given the efflux of time since the Section 9 Petition was filed, the Petitioner would be at liberty to modify and mould the contents of the Section 9 Petition. The parties state that they would approach the Arbitral Tribunal tomorrow to seek a convenient date for issuance of appropriate directions, including to make any arrangements that the Arbitral Tribunal would consider necessary, and to schedule a hearing on the Section 17 Application. Any arrangement being made between tomorrow and the time Tribunal considers the matter is entirely in the domain of the Arbitral Tribunal.

5. With the aforesaid directions, the Section 9 Petition is *finally disposed of*.

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.]**