

**IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO.122 OF 2016**

Mr. Jahabux Dhunjisha Dumasia ...Petitioner

Versus

Mr. Neville Rusi Khodabux ...Respondent

Mr. Sanjay Udeshi with Mr. Akshay Udeshi i/by M/s. Sanjay Udeshi and Co., for
Petitioner.

Mr. Sunil Patel with Mr. Manish Shroff i/by M/s. Tejas Dande and Associates, for
Respondent.

Mr. G.G.Ketkar, 1st Assistant to Court Receiver, present.

CORAM: S.J. KATHAWALLA, J.

DATE: 4th OCTOBER, 2016

P.C.:

1. The parties herein were carrying on Partnership Business in the name and style of Metal Crafters (hereinafter referred to as the firm) as per the terms of Partnership Deed dated 31st October, 2009.
2. The Petitioner issued a dissolution notice dated 15th July, 2016 to the Respondent inter alia dissolving the said Partnership business with effect from 15th July, 2016.
3. The present Petition is filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 (the Act) seeking reliefs against the Respondent as prayed therein.

4. Heard the learned Advocates appearing for the parties in the present Petition and the following order is passed by consent :

(i) The said firm Metal Crafters shall stand dissolved with effect from 1st November, 2016. However the Petitioner shall not be liable for any of the liabilities of the firm for the period prior to or after 15th July, 2016

(ii) The Respondent shall continue with the business of Metal Crafters by taking over all the assets and liabilities of the said Partnership Firm Metal Crafters.

(iii) Though the Petitioner is entitled to a substantial sum of money upon the dissolution of the firm and sale of assets, however as the Respondent is desirous of continuing the said Partnership business as a proprietary concern, the Petitioner has agreed to permit the Respondent to continue the said business by making payment (settlement consideration) of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only) in full and final settlement of all the claims of the Petitioner against the Respondent with respect to the said firm Metal Crafters.

(iv) The Respondent undertakes to pay to the Petitioner the said sum of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only) in 3 equal installments in the following manner:-

Installment	Cheque No.	Date of Cheque	Bank	Amount (Rs.)
1 st	050226	31.01.2017	Central Bank of	50,00,000/

			India	
2 nd	050227	30.04.2017	Central Bank of India	50,00,000/-
3 rd	050228	31.05.2017	Central Bank of India	50,00,000/-

The Respondent has handed over 3 postdated cheques to the Petitioner's Advocate drawn in favour of the Petitioner.

(v) The Respondent undertakes that none of the aforesaid cheques shall be dishonored under any circumstances. The Respondent also undertakes that he shall not give instructions of "Stop Payment" with respect to the said cheques to his banker.

(vi) The Court Receiver, High Court Bombay appointed as Receiver pursuant to the order dated 8th September, 2016 shall continue as receiver until the entire amount as per clause 6 hereinabove is paid to the Petitioner.

(vii) Only upon payment of the entire amount, the Court Receiver, High Court Bombay shall stand discharged without passing accounts.

(viii) The Respondent undertakes to carry on the business of Metal Crafters as a proprietary concern by taking over all the assets and liabilities hence the Petitioner shall not be liable for any liabilities and the same shall be paid by Respondent only.

(ix) Until payment as per clause no. 6 hereinabove to the Petitioner, the Respondent undertakes that he shall not create any third party rights in the

assets of the business Metal Crafters as set out in Exhibits E and E-1 (excluding machine stated at Sr.no.5 i.e. Spare Salem Herr- Voss- Coiling Reel & De coiler) to the Petition.

(x) The Respondent undertakes to inform all the creditors of Metal Crafters in writing within 2 weeks hereof inter alia pointing out that the Petitioner has retired from the Partnership Firm and all the liabilities with respect to the said firm Metal Crafters have been taken over by the Respondent and therefore the Petitioner will not be liable for any of the liabilities of Metal Crafters under any circumstances. The Respondent undertakes to provide proof of dispatch of these letters to all the creditors by Speed Post A.D. to the Advocates for the Petitioner within 2 weeks from the date hereof. The Respondent also undertakes to submit acknowledgment letters of the creditors to the Petitioner within a period of 2 (two) weeks from the date of the receipt of such acknowledgment letters.

(xi) The Petitioner shall also be entitled to issue a public notice inter alia informing the public at large about his retirement from the said Partnership Firm Metal Crafters and he is not liable for any of the liabilities of the firm Metal Crafters as the same have been taken over by the Respondent.

(xii) The Respondent undertakes that the Petitioner shall not be liable with respect to any of the liabilities of Metal Crafters. The Respondent also undertakes to indemnify and keep indemnified the Petitioner against all the costs and/or charges and/or expenses and/or claims by any of the creditors of Metal Crafters.

(xiii) In case any of the cheques mentioned hereinabove are dishonoured then without prejudice to the Petitioner's rights to adopt appropriate proceedings under the Negotiable Instruments Act, 1881 and other proceedings, the Respondent shall become liable to pay Rs.1,74,29,600/- along with interest thereon @ 18% per annum from the date of the Petition until payment and / or realisation, instead of the above stated lumpsum amount of Rs.1.50 Crores. The Petitioner shall immediately intimate the Court Receiver about such default who shall thereafter immediately take physical possession of the assets of Metal Crafters as mentioned in Exhibits "E" and Exhibit "E-1" to the Petition and shall dispose of all the assets as mentioned in Exhibit "E" and Exhibit "E-1" (excluding machine stated at Sr.no.5 i.e. Spare Salem Herr-Voss- Coiling Reel & De coiler, which is not a part of the firm's asset) and to pay the Petitioner the balance amount from the Principal Amount of Rs. 1,74,29,600/- (Rupees One Crore Seventy Four Lakhs Twenty Nine Thousand Six Hundred only) along with interest at the rate of 18% p.a. thereon from the date of filing of the present Petition until payment and / or realisation.

(xiv) There shall be a charge on the assets of the firm until the said amount as mentioned hereinabove is paid by the Respondent to the Petitioner.

(xvi) The Parties undertake to sign and execute documents if any (including Deed of Retirement) required for the purpose of giving effect to the above settlement and simultaneously Respondent shall also sign and execute any document/s required by the Petitioner for the purpose of justifying the amount to any government and/or Income Tax authorities.

(xvi) In the event of the Respondent bringing any outsider to join him in the business as Partner, such outsider shall forthwith file an Affidavit in this Court stating that he too shall be bound by this Consent Order.

(xvii) Before receiving the final installment of payment/consideration as set out hereinabove, the Petitioner shall execute an irrevocable Specific Power of Attorney in favor of the Respondent to enable the Respondent to complete all the formalities to retire the Petitioner from the business and keep the same with the Petitioner's Advocate. On receipt of the last and final payment, the Petitioner's Advocate shall handover the said Specific Power of Attorney to the Respondent. If required by the MIDC, the Petitioner also undertakes to personally attend before the MIDC authorities for transfer of the asset of the said Firm in favour of Respondent. However the Petitioner shall do so only when he is in India.

3. The above petition is accordingly disposed off with no order as to costs.

4. Liberty to apply.

(S.J.KATHAWALLA, J.)