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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 3011 OF 2016
IN
ARBITRATION APPLICATION NO. 308 OF 2015**

Harikishan Daga & Ors	...Petitioners
<i>Versus</i>	
Hrim Finance & Securities Pvt Ltd & Ors	...Respondents

Mr Karl Shroff, *i/b Mr Rahul J Gada, for the Applicant/ Respondent
No. 1.*

Mr Mithun Mahajan, *i/b AK Patil, for the Petitioner.*

Ms Vrinda Daga, *for Respondents Nos. 3, 5, 7 & 8.*

Mr Ankit Lohia, *Arbitrator appointed, is present.*

**CORAM: G.S. PATEL, J
DATED: 25th January 2017**

PC:-

1. Mr Lohia, the learned Arbitrator previously appointed by an order dated 8th July 2016, expresses his disinclination to continue with the reference of his arbitration. In my view, this is not only understandable but quite correct given the correspondence that preceded the filing of this Notice of Motion. I note that annexed to the Affidavit in Support of the Notice of Motion is a copy of the minutes of a meeting dated 8th December 2016. These minutes make for the most unfortunate reading. Mr Lohia found himself in a

situation where he had no option but to respond with a paragraph-by-paragraph traverse to correspondence by the Advocate for one of the parties. There is no reason why any Arbitrator, and particularly a Counsel at our Bar, should be subjected to this.

2. Mr Lohia's resignation as an Arbitrator is accepted.

3. In view of this, nothing survives in the Notice of Motion, one that seeks a clarification as to the scope of the arbitral reference. Obviously, that order is partially modified by this order. The order of 8th July 2016 disposes of the Arbitration Application. Consequently, there is no surviving proceeding before me.

4. The Notice of Motion is disposed of in these terms with no order as to costs.

At 3.00 p.m.

5. At this stage, handwritten Consent Terms are now tendered. These are signed by the Advocates for the Applicant and for the Respondent as also the original Applicants. These Consent Terms are taken on record and marked "X" for identification with today's date. It is agreed that the claim in arbitration by the Petitioners against HRIM Finance & Securities Pvt Ltd before the arbitral tribunal will be restricted to a claim against Shree Hanuman Trading Company for recovery of debt in the amount of Rs. 8,19,16,435/- plus interest at the rate of 15%. Respondents Nos. 2 to 10 in the

Statement of Claim previously filed before the previous Arbitrator, Mr Lohia, are dropped from this arbitral claim.

6. The parties seek to refer this dispute (and only this dispute as set out above) to the sole arbitration of Mr Kamal Khata, an Advocate of this Court. He has agreed. His Statement of Disclosure is taken on record and marked “X1” for identification.

7. Having regard to the previous experience in the matter:

- (a) Neither of the parties to the arbitration nor their Advocates are to enter into any correspondence by any mode whatsoever with Mr Khata except for filing of documents, fixing of dates and routine matters.
- (b) Mr Khata will be at the fullest liberty to specify or restrict the matters on which parties may correspond with him.
- (c) Unless Mr Khata specifically permits, neither side will communicate with him by sms, whatsapp or email.
- (d) Mr Khata is not required to look to the convenience of either side or their advocates or counsel in fixing dates, but will fix dates of his convenience and both sides will make the necessary arrangements to attend those hearings. They remain absent at their peril.
- (e) Mr Khata is not required to adjourn matters for counsel, and especially not on the ground that advocates or counsel are otherwise engaged in court.

- (f) No Counsel or Advocate will leave any arbitral hearing before Mr Khata till such time as he closes the session.
- (g) Both sides will bear their own costs. Both sides will pay Mr Khata's fees and the costs of the arbitration, including venue and stenographic services costs, equally.
- (h) Mr Khata's fees for each session (or with such periodicity as he decides) are to be paid in full in advance, each side bearing 50%.

8. The experience also shows that the previous Arbitrator was informed only a few minutes before the first meeting that was fixed by the Court. I do not want a repeat of this. The Associate of this Court is requested to give an ordinary copy of this order to Mr Khata so that there is no misunderstanding. Mr Khata is only requested to call his first meeting for fixing the schedule at his earliest convenience.

9. It is clarified that the reference to Mr Khata's arbitration starts from the date of the first meeting he holds and not from the time when Mr Lohia entered upon the reference to his arbitration. The arbitration before Mr Khata is *de novo*.

(G. S. PATEL, J.)