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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.91 OF 2017

Yashwant Dairy Farm & Ors. ..Petitioners.

V/s.

M/s. HDB Financial Services Ltd. ..Respondent.

Mr.Subhash Bane for the Petitioners.

Ms.Fatima Barodawalla I/b. Raval Shah & Co. for the Respondent.

CORAM: G.S.KULKARNI, J.

DATE : DECEMBER 5, 2018

P.C.:-

This petition was heard on earlier occasion and it was adjourned to enable the Respondents to take instructions as to whether the parties will be willing for setting aside of the Award by consent and more particularly in view of the order dated December 21, 2017 passed in Commercial Appeal No.170 of 2017 by the Division Bench of this Court.

2. The learned counsel for the Respondent, on

instructions, fairly states that the Respondents are agreeable for the impugned Award dated June 7, 2016 passed by the learned Sole Arbitrator to be set aside and also agreeable for a fresh arbitration to be conducted by the Arbitrator who was earlier nominated. Mr.Subhash Bane, the learned counsel for the Petitioner has also agreed to the above proposition.

3. In view of the above consensus between the parties, this petition can be disposed of by passing the following order :-

- i) The impugned Award dated June 7, 2016 of the learned sole arbitrator is set aside by consent of the parties;
- ii) As agreed between the parties, the learned Arbitrator shall undertake a fresh arbitration;
- iii) The parties may initially approach the learned Arbitrator initially on December 10, 2018 at 11.00 a.m.;
- iv) In pursuance to the order dated December 21, 2017 passed by the Division Bench in Commercial Appeal No.170 of 2017, the Petitioner shall deposit an amount of Rs.25 lakhs;

- v) The learned counsel for the Petitioner has no objection for the Respondent to withdraw the said amount. Accordingly, the Respondents are permitted to withdraw the said amount. Office is directed to do the needful;
- vi) If the Respondent are desirous of praying for any further relief in the nature of interim relief in the arbitral proceedings, they are permitted to do so as permissible in law;
- vii) All contentions of the parties on merits of the matter before the learned Arbitrator are expressly kept open;
- viii) Needless to observe that the learned Arbitrator shall *de novo* arbitrate the matter without being influenced by the impugned order as the said order is set aside;
- ix) The arbitration petition is accordingly disposed of in the above terms. No costs.

(G.S.KULKARNI, J.)