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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**ARBITRATION PETITION (ST.) NO.18770 OF 2019**

M/s.Tree House Education & Accessories Ltd.      ..Petitioner  
Vs.  
Janodhar Shikshan Prasarak Mandal & Ors.      ..Respondents

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Mr.Anoshak Daver, with Ms.Gauri Sakhardande and Ms.Ami Brahmbhatt  
i/b. Mr.Tushar Goradia for Petitioner.  
Ms.Pinky Sharma i/b. V & M Legal for Respondents.

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**CORAM :    G.S. KULKARNI, J.**

**DATE     :    16<sup>th</sup> OCTOBER, 2019**

**P.C.:**

Heard learned Counsel for the parties.

2.     At the outset learned Counsel for the respondents would submit that the respondents on re-verification of the facts, have no grievance in regard to the document not being adequately stamped.

3.     Mr.Daver, learned Counsel for the petitioner would contend that as per the provisions of the Stamp Act, the document is adequately stamped. Both the parties submit that there is no impediment for this Court to proceed and pass appropriate orders.

4.     I have perused the document in question. The following clauses would be material to accept the contentions as urged on behalf of the parties that the document being sufficiently stamped at Rs.500/-:-

“2.1 Tree House on the basis of representation of the Trust, and strictly subject to the Legal and Financial Due Diligence of the documents/accounts/records of the Trust to

be carried out hereinafter and to the satisfaction of Tree House has on the preliminary terms and conditions of this MOU, agreed to provide the following financial, infrastructural and educational support to the Trust to fulfil the objectives of the Trust.

2.2 It shall make a total payment of Rs. 4 Crore (Rupees Four Crore) to the Trust, as an interest free Security deposit. Subject to the relevant level of construction being complete in the time period as agreed under this MOU the aforesaid payment shall be released in instalments as per the progress and completion of various stages of construction of the said building more particularly described hereunder:

- (i) Rs. 1.5 CRORE – At the time of signing of this MOU.
- (ii) Rs. 0.5 CRORE – At the time of providing the permission of playground on the additional land as stated hereinabove.
- (ii) Rs. 1 CRORE – On completion of construction of plinth level
- (iii) Rs. 1 CRORE – On completion of first slab of the building.

2.5 Tree House will allow the Trust to use its trademark, logo “Tree House” on a non-exclusive basis for the School on the terms and conditions of License Agreement to be executed between the parties.

2.6 Tree House shall disclose and provide methods of teaching, modules and materials to the School for improvement of standard of education in the School. Tree House also undertakes to train the teachers for improving quality of teaching in the School. The aforesaid services shall be provided by Tree House to the Trust on a non-exclusive basis under a separate Agreement to be executed between the parties.

3.1 The Trust agrees that this MOU is only incorporating the preliminary understanding between the Parties hereto and in any case shall not be binding to Tree House till the completion of Legal and Financial Due Diligence to the satisfaction of Tree House and only on fulfilment of the all the following condition precedents;

- (i) The Trust shall carry out necessary amendments to its bye-laws/Memorandum of Association/Constitution Documents on or before the 31<sup>st</sup> December 2011 and ensure that a separate governing committee is formed to carry out the day to day activities of the school and there shall be 06 members in the Managing Committee/Governing Body of the Trust wherein 05 members shall be exclusively nominated by Tree House and 01 member shall be nominated by the Trust. The formation of the

Managing Committee/Governing Body will be intimated to the Charity Commissioner. No member of such governing body/managing committee shall have a right to remove the members nominated by Tree House in the aforesaid manner and necessary amendment to give effect to this provision shall be made in the constitution documents of the Trust. The governing committee will be in force until the termination of agreement between the parties of the first part and the parties of the second part. The Trust has a right to change the 01 member nominated by it as when, at its own discretion.

....

(iii) The Trust to give effect to the understanding under this MOU by entering into a separate Agreement with mutually decided terms & conditions with Tree House for improvising the standards of education, intellectual level of its students, applying holistic approach towards education, extracting optimum services from its employees, providing unique co-curricular activities for its students and creating a brand goodwill of its own.”

5. Learned Counsel for the respondents on instructions would submit that her clients would not have any objection for an arbitral tribunal to be appointed. She would not dispute the existence of the arbitration agreement as contained in clause (12) of the MOU. The parties also contend that the venue of the arbitration is agreed to be at Mumbai.

6. In view of the respondents consenting to arbitration, the petition would be required to be allowed. Hence the following order:-

### **ORDER**

- (i) Ms.Ayesha Damania, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Memorandum of Understanding dated 10 June 2010;
- (ii) The learned prospective sole arbitrator, before entering the reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and

Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties;

(iii) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

(iv) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(v) All contentions of the parties are expressly kept open;

(vi) The petition is disposed of in the above terms. No costs.

(vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

“4<sup>th</sup> Floor, Oricon House, K.Dubhash Marg,  
Kalaghoda, Mumbai – 400 023.  
Mobile: 9322222191  
E-Mail: ayeshadamanian@gmail.com”

**[G.S. KULKARNI, J.]**