

- (a) Joint Venture Agreement dated 30th August 2004;
- (b) Supplemental Joint Venture Agreement dated 28th October 2004; and
- (c) Development Agreement dated 21st January 2006

3. The Arbitration shall be under the Arbitration Clauses contained in the aforesaid agreements. It is clarified that the present minutes/order do not constitute a fresh agreement to arbitrate and that the Respondents have not waived their objections to the arbitrability of the disputes.

4. It is hereby agreed that the all rights and contentions of both the Petitioner as well as the Respondents hereto, including but not limited to the contentions of the Respondents, as set out below, are hereby expressly kept open.

- (a) The Petitioner Company is not a signatory and not a party to the aforementioned Agreements and cannot invoke Arbitration or claim any other rights under the aforementioned Agreements.
- (b) The Alleged conversion of the Partnership Firm, M/s Kumar Builders, does not entitle the Petitioner Company to invoke Arbitration or claim any other rights under the aforementioned Agreements.
- (c) The Joint Venture, M/s Suryodaya Estates, is an unregistered Partnership Firm, and cannot invoke Arbitration under the aforementioned Agreements or

enforce any rights as against the Respondents under the aforementioned Agreements.

- (d) The above mentioned contentions are not exhaustive. The Respondents will be entitled to file Applications under Section 16 in this regard including on these and any other grounds.

5. Also by consent and to ensure that there is no time lost I take the liberty of fixing in this order itself a schedule for the completion of pleadings before the learned sole arbitrator. The dates are agreed by Counsel appearing before me. The schedule is as follows:

- (a) The statement of claim will be filed and served on or before 6th January 2020.
- (b) The statement of defence will be filed and served on or before 17th January 2020.
- (c) At this stage no counter claim is yet to be filed although the Advocates for the Respondents agree that they will keep their respective or joint counter claim ready so that further time is not lost.
- (d) The present Respondents will file their respective Section 16 Applications on or before 17th January 2020.
- (e) The reply from the present Petitioners to this Section 16 Application is to be filed and served on or before 24th January 2020.
- (f) It is clarified that this direction does not mean that each Respondent is required to file a Section 16 Application.

If one Respondent does so, the second Respondent is at liberty to file an Affidavit supporting it.

- (g) A Rejoinder in the Section 16 Application is not anticipated but should be it be necessary it will be filed on or before 31st January 2020.
- (h) In order to save further time the present Petition under Section 9 is not proposed to be pressed or treated as an Application under Section 17. The Petitioner will file a substantive separate Section 17 Application also on or before 6th January 2020. The Reply to this will be filed on or before 17th January 2020 and the Rejoinder, if any, has to be filed and served on or before 24th January 2020.
- (i) The parties agree that they will request the learned sole arbitrator to dispose of the Interim Applications on or before 31st March 2020. This request is noted. It stands to reason that the Section 16 Application will necessarily need to be disposed of before any order is made on the Section 17 Application although, of course, the two Applications may actually be heard together.
- (j) If the Respondents' Section 16 Application fails, the counter claim, if any, is to be filed within three days of an order on that Section 16 Application. A statement of defence to the counter claim is to be filed and served within two weeks thereafter.

(k) It is also clarified and parties agree that no amendments to the principal pleadings are to be moved until disposal of the Section 16 Application.

6. In view of this time frame, the Petitioners agree not to press for ad-interim reliefs before the learned sole arbitrator.

7. Parties will arrive at an agreement as to fees and their sharing before the learned sole arbitrator.

8. *General Directions:*

(a) **Communication to Arbitrator of this order:**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from today of the order being uploaded.

(ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator **Mr Justice SJ Vazifdar (Retd)**
Former Chief Justice, P&H
High Court

Address 2nd Floor, Readymoney Mansion
43 Veer Nariman Road
Mumbai 400 001

Mobile +91 98201 02088

Email shiavaxvazifdar@gmail.com

- (b) **Disclosure:** The learned Sole Arbitrator is requested to forward his statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently in advance of his entering upon the reference to his arbitration. That statement will be retained by the Prothonotary & Senior Master on the file of this application. Copies will be given to both sides.
- (c) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (d) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.
- (e) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six

months to complete the arbitration should the learned Sole Arbitrator find it necessary.

(f) Venue and seat of arbitration: Parties agree that the venue and seat of the arbitration will be in Mumbai.

9. The commercial arbitration petition is disposed of in these terms. No costs.

(G. S. PATEL, J)