

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL ARBITRATION PETITION NO. 1001 OF 2019

Mukesh Makandas Mehta
VS.
Kamlesh Shah

...Petitioner
...Respondent

Dr.Birendra Saraf with Nausher Kohli, S.Shukla, Ms.Viraj Gami and Yash Dhruvza i/b. DSK Legal for Petitioner.
Mr.Mustafa Doctor, Senior Advocate with Nimay Dave, Bankim Gangar i/b. Dhaval Vussonji & Associates for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 24 SEPTEMBER 2019

P.C. :

This commercial arbitration petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("the Act"). It seeks protective reliefs in respect of the business of a joint venture/ association of persons under a joint venture agreement to which the Petitioner and Respondent are parties, claiming to be equal members and co-owners in respect of the properties of the joint venture/association of persons.

2 After the matter is heard at some length, it is agreed between learned Counsel for the parties that the petition may be disposed of in terms of the following order.

3 It is , accordingly, ordered as follows:

(a) By consent, Mr.Justice C.K. Thakker (Retired Judge of Supreme Court) is appointed as a Sole Arbitrator to adjudicate upon the disputes and differences between the parties in relation to the association of persons under the name of Prestige Properties ("AOP").

(b) For a period of six weeks from today, the following order shall operate as an interim order:

(i) The Respondent shall make a disclosure of documents in accordance with prayer clauses (c), (d), (g), (i), (l) and (m) of the arbitration petition herein. It is, however, clarified that according to the Respondent, inspection of most of the documents, which are covered by these prayers, has already been given by the Respondent to the Petitioner and that such inspection has been recorded in the letter addressed by the Respondent's Advocate to the Petitioner's Advocate on 25 February 2019; the inspection ordered herein shall, accordingly, be given of the documents available with the Respondent after a requisition is made in that behalf by the Petitioner, if such inspection has not already been given as may be recorded between the parties.

(ii) The Respondent shall not deal with the funds of AOP including its receivable debts except for servicing the loans of Aditya Birla Finance Ltd. extended to the AOP and for maintenance of the building and payment of property taxes. It is made clear that this direction shall be without prejudice to the Petitioner's case that the loans given by Aditya Birla Finance Ltd. were unauthorised, that is to say, without the consent of the Petitioner or the Respondent's contention that the loans were indeed authorised.

(iii) The Respondent shall not create any third party right in respect of the properties of the AOP without an express consent in writing of the Petitioner.

(iv) It is clarified that this order is passed purely on consent of parties and without this court applying its mind to the controversy and also without prejudice to the rights and contentions of the parties.

(c) The present commercial arbitration petition shall be converted into, and treated as, the Petitioner's application before the learned Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996. The Respondent shall be entitled to file such reply as he may deem fit. Further pleadings, if any, may follow in accordance with the directions of the learned Arbitrator.

(d) The Petitioner will be at liberty to apply for extension of these interim reliefs or further interim reliefs before the learned Arbitrator by amending this application or making any other appropriate application under Section 17 of the Act. All rights and contentions of the parties on merits in that behalf are kept open.

(e) The commercial arbitration petition is disposed of in the above terms.

(S.C. GUPTE, J.)