

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION PETITION NO. 1081 OF 2019**

Pushpak Realities Pvt Ltd & Ors	...Petitioners
<i>Versus</i>	
Kavindra R Shah & Ors	...Respondents

Mr Pankaj Jain, i/b PD Jain, for the Petitioner.
Mr Firoz Bharucha, with Animesh Singh i/b Vimla & Co., for the Respondent.

CORAM: G.S. PATEL, J.
DATED: 27th January 2020

PC:-

1. The Petition was filed in July. Disputes arose under a Partnership Agreement dated 15th September 2010 in which the 2nd Petitioner had a 49% stake. The Arbitration Clause is Clause 33 at page 37 and this is how it reads.

“33. All disputes and differences and questions in connection with the partnership of the Continuing Partners and Incoming Partners including construction of any of the articles herein arising between the Continuing Partners and Incoming Partners hereto or any of them and their heirs and legal representatives shall be referred to the sole Arbitration of an independent person if the Continuing Partners and

Incoming Partners shall agree upon or otherwise to the Arbitrators to be appointed by the parties to such dispute or difference which shall be in accordance with and subject to the provisions of the Arbitration and Conciliation Ordinance 1996 or any Statutory modification or re-enactment thereof.”

2. With the onset of partnership disputes, the Petitioners are in Court seeking these reliefs:

“(a) That, this Hon’ble Court be pleased to direct the Respondents to deposit a sum of Rs. 6,31,61,090/- with the Petitioner No.1 abovenamed being the admitted balance in the capital account maintained by the Partnership firm and reflected in the Balance Sheet ending 31.03.2018;

(b) That, this Hon’ble Court be pleased to direct the Respondents to deposit a sum of Rs.28,99,303/- with the Petitioner No.2 abovenamed being the admitted balance in the capital account maintained by the Partnership firm and reflected in the Balance Sheet ending 31.03.2018;

(c) That the Respondent No.1 be directed to bring back in the partnership firm, the sum of Rs.3,50,00,000/- withdrawn from the Partnership Firm between period 31.10.2017 to 31.03.2018.

(d) That the Respondent No.2 be directed to bring back in the partnership firm, the sum of Rs.1,00,000/- withdrawn from the Partnership Firm on 31.10.2017.

(e) That the Respondent No.3 be directed to deposit in the partnership firm a sum of Rs.2,37,32,472 (debit balance as per audited balance sheet as on 31.0.2018)

(f) That this Hon'ble Court be pleased to direct the Respondents to disclose on oath entire details of all sale transactions (movables and immovable) with respect to assets of the firm."

3. First of all there is no urgency. Second, the prayers are in the nature of final reliefs that can be considered upon accounts being taken.

4. The only relief that may be considered as a variation or modification of prayer clause (f) is for a disclosure of partnership accounts. The Petitioners contend that they have not been given those statement of accounts. Equally, the response to this is that it was the 2nd Petitioner's husband who was maintaining accounts until 2018 and the 2nd Petitioner and her husband have failed to give the Respondents those accounts. The audited accounts for 2018 are in fact annexed to this Petition and this disclosure is made for the first time by the Petitioners only in this petition.

5. Consequently, in my view, the only order that is required to be passed is that within 15 days from today, each side will give to other, subject to such qualifications as they may wish to notify, copies of the accounts that each side has maintained. By this, I mean the balance-sheet and profit and loss accounts of the firm for the years in question.

6. No other reliefs are possible in this Section 9 Petition.

7. Parties are agreed that their disputes may be referred to the Sole Arbitration of a Counsel of this Court to be named by this Court. I will request Mr Phiroze Palkhiwala, learned Counsel of this Court to take up the assignment.

(a) **Appointment of Arbitrator:** Mr Phiroze Palkhiwala, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under a Partnership Agreement dated 15th September 2010.

(b) **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 the date this order is 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 Phiroze Palkhiwala,
Advocate**

Address 20-E, Examiner Press Building,
2nd Floor, Dalal Street, Fort,
Mumbai 400 023

Mobile +91 98208 11460

Email palkhivala@gmail.com

(c) **Disclosure:** The learned Sole Arbitrator is requested to forward the necessary 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 before entering upon the reference to arbitration. That statement will be retained by the Prothonotary & Senior Master on the file of this application. Copies will be given to both sides.

- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **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.
- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) **Interim Application/s:**

- (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.
 - (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (h) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (i) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (j) **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.
- (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

8. The Commercial Arbitration Petition is disposed of in these terms. No costs.

(G. S. PATEL, J)