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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1507 OF 2019**

Shamshul Ishar Khan	...Petitioner
<i>Versus</i>	
VS Jayakumar	...Respondent

**WITH
ARBITRATION APPLICATION NO. 450 OF 2019**

Shamshul Ishar Khan	...Applicant
<i>Versus</i>	
VS Jayakumar	...Respondent

Mr Gautam Ankhad, i/b Mr Vaibhav P Pandya, for the Petitioner.
Mr Dharam Juman, i/b Tanmayee Salekar, for the Respondent.

CORAM: G.S. PATEL, J.
DATED: 14th January 2020

PC:-

1. The Arbitration Clause in the Partnership Deed dated 24th November 2009 executed between the parties is Clause 12 at pages 18 and 19, and reads thus:

“12: If at any time during the continuance of the partnership or afterwards, any dispute, difference or question shall arise between the partners and/or their

respective legal representatives touching the partnership or the accounts or the transaction thereof or any valuation or division of the assets, name and Goodwill or debts or liabilities to be made hereunder or the construction meaning, effect or application of these application of these presents or any clause or thing herein contained or the respective rights, duties or liabilities hereunder of the partner or persons claiming under them respectively or in any way touching the carrying on or winding up of the partnership business. Such disputes or question shall be referred to arbitrators, one to appointed by each party to the difference in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory re-enactment or modification thereof for the time being in force and the decision of the arbitrators so appointed shall be binding on all the partners.”

2. The parties agree on the appointment of Mr Mihir Naniwadekar, learned Advocate of this Court to decide the disputes and differences between the parties arising from the Partnership Deed dated 24th November 2009.

(a) **Appointment of Arbitrator:** By consent, Mr Mihir Naniwadekar, Advocate, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under the Partnership Agreement dated 11th January 2013.

(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 Mihir Naniwadekar,**
Advocate

Address 214 DBS Heritage House
Prescott Road, Near Cathedral
School
Mumbai 400 001

Mobile +91 85303 64543

Email mihircn@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. Liberty to file a Counter-Claim.

- (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. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii) The present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section

17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits. All contentions are left open.

- (iii) 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.

3. The Arbitration Petition and Arbitration Application are disposed of in these terms. No costs.

(G. S. PATEL, J)