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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 75 OF 2021**

Kalpesh G Oswal	...Petitioner
<i>Versus</i>	
Sunil S Ranka & Ors	...Respondents

Mr Amit Jamsandekar, *with Vignesh Kamat & Nikhil Patil, i/b Prabhakar M Jadhav, for the Petitioner.*

Mr Tejesh Dande, *with Bharat Gadhavi, Vishal Navale, Aniket Aghade and Trushna Shah, i/b Tejesh Dande & Associates, for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 15th September 2021

PC:-

1. Heard. Mr Jamsandekar for the Petitioner says that there are three Deeds of Reconstitution of partnership. These are annexed at Exhibit "A" collectively from pages 15 to 72.

2. The first of these is dated 14th July 2015. The Arbitration Clause in question is to be found at page 23 in Clause 28. The second Reconstitution Deed begins at page 25. It is on a stamp paper of 28th September 2016. This also has an Arbitration Clause 28. The third Reconstitution Deed is dated 30th August 2019. It begins at page 44 and the provision for arbitration is in Clause 27 at page 53.

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3. There seems to be no dispute that the Petitioner, Kalpesh Oswal, and the Respondent, Sunil Ranka, were both parties (amongst others) to all three Reconstitution Deeds. The Petitioner invoked arbitration by his Advocate's notice dated 11th January 2021 (Exhibit "C" at page 82). The Respondent replied on 25th January 2021 (Exhibit "D" at page 85). The Respondent did not dispute the existence of the Reconstitution Deeds, that he and the Petitioner were parties to it, or the existence of the Arbitration Agreements. He did dispute the Petitioner's allegations, but those are matters that will be decided in arbitration. All contentions are obviously left open including any that fall for determination under Section 16 of the Arbitration and Conciliation Act 1996.

4. In his reply, the Respondent suggested the names of two Arbitrators and said that if the Petitioner was not agreeable to these names then a Court order would be required.

5. With this background, it is difficult to appreciate Mr Dande's submission that there is no Arbitration Agreement. The Affidavit in Reply (from page 88) does not take this ground either. It says that there are allegations of fraud etc that cannot be investigated in arbitration. That aspect of the law has been clarified by the Supreme Court. Merely using the word fraud will not serve to oust an Arbitration Clause.

6. There is no option now but to refer the parties to Arbitration. Evidently the arbitration will have to be based in Pune which is the designated venue and where the parties are based.

7. Parties have agreed on the nomination of Mr Hasit B Seth, learned Advocate of this Court as the sole arbitrator.

8. The disputes between the parties arising under the three Reconstitution Deeds are referred to the sole arbitration of Mr Hasit B Seth, learned Advocate of this Court.

TERMS OF APPOINTMENT

(a) **Appointment of Arbitrator:** Mr Hasit B Seth, Advocate, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under the three Reconstitution Deeds.

(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 Petitioner within one week from the date this order is uploaded.

(ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator **Mr Hasit B Seth, Advocate**

Address 6, Oriental Business Centre,
Ground floor,
Rajabahadur Building 14,
Ambalal Doshi Marg,
Fort,
Mumbai 400 001.

<i>Mobile/</i>	9923204044
<i>Phone</i>	022-40424006
<i>Email</i>	hbs@hlaw.in

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioner will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (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. The information is to include functional email addresses and mobile numbers.
- (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 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 Pune.
- (l) **Procedure:** These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

9. The Petition is disposed of in these terms. No costs.
10. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)