

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

COMMERCIAL ARBITRATION PETITION NO.243 OF 2021

Neha BhuwalkaPetitioner

V/s.

Anand AryaRespondent

Mr. Ankit Lohia a/w. Mr. Sahil Gandhi and Ms. Dimple Vora i/b. Markand Gandhi and Co. for petitioner.

Ms. Amrita Kharkar i/b. KV Legal for respondent.

CORAM : K.R.SHRIRAM, J.

DATED : 27th JULY 2021

P.C. :

1 Ms. Kharkar undertakes to file Vakalatnama on behalf of respondent within one week from today. Undertaking accepted.

2 Mr. Lohia states that the petition was served on respondent on or about 22nd February 2021. Ms. Kharkar does not dispute that but seeks two weeks time to file reply. Request rejected since respondent had over five months to file a reply.

3 Mr. Lohia states that after the notice was issued, respondent has sold the premises mentioned in the cause title. Ms. Kharkar disagrees and states that the said premises was mortgaged to someone else, who sold the premises under SARFAESI proceedings.

4 In my view, therefore, it will not be out of place to grant prayer clauses – (a) and (b) of the petition. Prayer clauses – (a) and (b) accordingly granted, which read as under :

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(a) this Hon'ble High Court be pleased to pass an order and direction calling upon the respondent to forthwith disclose on affidavit before this Hon'ble High Court, the complete particulars, including the location and valuation of each and every asset and property, whether movable or not, held by him, as also the details of all such assets, monies, bank deposit and accounts held by him, singly or jointly (with any person or entity) and/or severally and to further disclose on affidavit, before this Hon'ble High Court, the details of all transactions entered into by the respondent including assets and cash transfers in the last 1 (one) year prior to the filing of the present petition;

(b) pending the hearing and final outcome of the arbitration, this Hon'ble High Court be pleased to pass an order of injunction restraining the respondent and/or his representatives, agents or any other person claiming through or by the respondent from dealing with his personal assets, movable and immovable, monies, investments including shares, mutual funds, SIPs, bank accounts and deposits wherever situated and from encumbering, selling, transferring or creating any third party interest by parting with possession of the assets disclosed by the respondent.

5 The disclosure affidavit shall be filed by respondent and copy served within four weeks from today. Respondent shall also annex to the affidavit, copies of his annual returns and balance sheet for the period 1st April 2018 to 31st March 2019, 1st April 2019 to 31st March 2020, 1st April 2020 to 31st March 2021. These balance sheets shall be certified as true copy by the Chartered Accountant through whom the same has been filed. If the balance sheet for the year ending 31st March 2021 has not been filed till date, respondent shall certify it as true copy and provide the same to petitioner's advocate. If any of the assets are charged, then proof of

documents creating the charge shall also be annexed to the affidavit. In the affidavit, respondent shall also mention how much of the liability has been discharged and how much is outstanding.

Should petitioner wishes to seek further reliefs, he may move the Arbitrator with an application under Section 17 of the Arbitration and Conciliation Act, 1996 and the same shall be considered by the Arbitrator and disposed in accordance with law.

6 Mr. Lohia states that notice invoking arbitration has been given by a letter dated 8th October 2020, copy whereof is at Exhibit “H” to the petition to which there has been no reply. The postal acknowledgment is also annexed to the petition. The 30 days period also is over.

7 I have passed this order above since I was satisfied that there was an arbitration agreement as contained in the letter dated 24th December 2018.

8 At this stage, Ms. Kharkar took instructions from respondent over telephone and stated that the Court can appoint anyone of the three persons mentioned in the notice dated 8th October 2020 invoking arbitration.

9 Accordingly, Mr. Cyrus E. Bharucha, an Advocate practicing in this Court (Address : 201, 2nd Floor, Savla Chambers, 40 Cawasji Patel Street, Fort, Mumbai – 400 001, Mobile No.:9820310983, Email ID : cy.bharucha@gmail.com) is appointed as sole Arbitrator to arbitrate on all

Gauri Gachwad

This order has been modified by speaking to the minutes of the order dated 13.09.2021.

disputes arising out of and/or in connection with and/or relating to the friendly loan repayable on or before 30th June 2018 and counter claim, if any. All rights and contentions of the parties are kept open, except the question of jurisdiction of the arbitrator.

10 The fees to be fixed by the Arbitrator, administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by petitioner and 50% by respondent and the same shall be subject to costs in the arbitral proceedings.

11 For the sake of expediency, learned Arbitrator to communicate in writing to the advocate for petitioner with copy to respondent the disclosures as required under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 within two weeks of receiving a copy of this order from any of the party. Petitioner shall file a copy of the disclosures in the registry within two weeks of receiving the same.

12 Petition accordingly stands disposed.

13 Liberty to apply if the Arbitrator expresses inability to accept the reference.

(K.R. SHRIRAM, J.)