

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

ARBITRATION PETITION NO.290 OF 2022

Satish Chimanlal Shah. ..Petitioner.
Vs.
Bhaskar Bapulal Shah & Ors. ..Respondents

with

Interim Application (I) No.19325 of 2022

in

**ARBITRATION PETITION NO.290 OF 2022
(NOT ON BOARD TAKEN ON BOARD)**

Nihar Himansu Shah. ...Intervener/Applicant

In the matter between:

Satish Chimanlal Shah. ..Petitioner.

Vs.

Bhaskar Bapulal Shah & Ors. ..Respondents

And

ARBITRATION PETITION NO.295 OF 2022

Satish Chimanlal Shah. ..Petitioner.

Vs.

Bhaskar Bapulal Shah & Ors. ..Respondents

with

Interim Application (I) No.19316 of 2022

in

**ARBITRATION PETITION NO.295 OF 2022
(NOT ON BOARD TAKEN ON BOARD)**

Nihar Himansu Shah. ...Intervener/Applicant

In the matter between:

Satish Chimanlal Shah. ..Petitioner.

Vs.

Bhaskar Bapulal Shah & Ors. ..Respondents

And

**ARBITRATION APPLICATION NO.92 OF 2022
(NOT ON BOARD TAKEN ON BOARD)**

Satish Chimanlal Shah. ..Petitioner.

Vs.

Bhaskar Bapulal Shah & Ors. ..Respondents

And
ARBITRATION APPLICATION NO.94 OF 2022
(NOT ON BOARD TAKEN ON BOARD)

Satish Chimanlal Shah.

..Petitioner.

Vs.

Bhaskar Bapulal Shah & Ors.

..Respondents

Mr.Chirag Mody with Mr.Yash Momaya with Mr.Ayaz Bilawala and Ms.Disha Mehta I/B. Bilawala & Co., for the Petitioner/Applicant.

Mr.Yugal Anjana Bhatia with Haaris Kozadia, for the Intervener/Applicant in IAL 19316/22 and IAL 19325/22.

Mr.Mutahhar Khan with Mr.Hemant Mehta i/b. Mehta & Co., for Respondent Nos.1 and 2.

Mr.Ishan Srivastava, for Respondent No.3 in ARBP no.290/22 & for respondent No.4 in arbp NO.295/22.

CORAM : G.S. KULKARNI, J.

DATE : JUNE 20, 2022.

P.C.:

1. Learned Counsel for the applicant states that Interim Application (lodg) Nos.19325 of 2022 in Arbitration Petition No.290 of 2022 and Interim Application (lodg) No.19316 of 2022 in Arbitration Petition No.295 of 2022 are filed, praying for amendments in the petitions to implead the applicant who are the legal heirs of the deceased partners.
2. Leave to implead the legal heirs of Himanshu Shah and Janak Shah, the deceased partners. Amendment be carried out by tomorrow(21 June 2022). Reverification is dispensed with. Both the Interim Applications are accordingly disposed of.
3. Petition Nos.290 of 2022 and 295 of 2022 are filed under Section

9 of the Arbitration and Conciliation Act,1996 (for short '**the Act**'). Application Nos.92 of 2022 and 94 of 2022 are filed under Section 11 of the Act.

4. The disputes and differences between the parties have arisen under the Deed of Partnership dated 3 April 1994 read with two subsequent amending deeds dated 7 March 2006 and 5 December 2013. The dates of such documents are common in respect of both the partnership firms, subject matter of these proceedings.

5. After these proceedings were heard for some time, learned Counsel for the parties would fairly submit that the disputes and differences between the parties which have arisen under both these deeds of partnership can be referred to arbitration by appointing an arbitral tribunal. It is also submitted that the Section 9 petitions can be converted into the applications under Section 17 to be adjudicated by the arbitral tribunal. There is no dispute in regard to the existence of the arbitration agreement which is contained in paragraph/clause 13 in the first partnership deed dated 3 April 1994 and Clause/paragraph 17 in the both amended deed of partnership deeds. Also there is no dispute on the invocation of the arbitration agreement.

6. Mr.Modi, learned Counsel for the petitioner would submit that in the meantime, a disclosure ought to be made by the respondents in regard to which also there is a prayer as made in both the proceedings filed under Section 9 namely prayer clause (d) of these petitions. Mr.Khan, learned Counsel for the respondents would fairly state that all disclosures shall be made in the reply affidavits which would be filed by the respondents to the Section 17 applications. Statement of Mr.Khan is accepted. Mr.Khan has also made a statement that till the Section 17

applications are made, the respondents shall not deal with the assets of the partnership firm, the details of which are set out in prayer clause (b) of the respective petitions, except to deal with the movable assets for the purpose of day to day conduct of the businesses. Statement is accepted.

7. In the above circumstances and the consensus, in my opinion, it is in the interest of justice that the parties are referred to arbitration by appointing an arbitral tribunal. Hence, the following order:-

ORDER

(i) Mr.Akshay Patil, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Deed of Partnership dated 3 April 1994 read with two subsequent amending deeds dated 7 March 2006 and 5 December 2013;

(ii) The learned sole prospective arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(iv) The pending Section 9 petitions are converted into the proceedings under Section 17 to be adjudicated by the arbitral tribunal. All contentions in that regard are expressly kept open.

(v) Let reply affidavits to the Section 17 application be filed within a period of four weeks.

(vi) All contentions of the parties on merits of the matter are expressly kept open;

(vii) In the meantime, the respondents shall not deal with the assets of the partnership firm, the details of which are set out in prayer clause (b) of the respective petitions, except to deal with the movable assets in the day to day and routine course of business.

(viii) The petitions and the applications are disposed of in the above terms. No costs.

(ix) Office to forward a copy of this order to the learned Arbitrator on the following address:

Mr.Akshay Neminath Patil, Advocate.
302 Dhun Building Premises Co-op.Soc.Ltd.
23/25, Janma Bhoomi Marg, Fort,
Mumbai-400001.
E-mail.: akshaypatil37@gmail.com &
Phone :02222875556

[G.S. KULKARNI, J.]