

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO.94 OF 2023**

WITH

COMMERCIAL ARBITRATION APPLICATION(L) NO.32709 OF 2022

Dharmesh Kishore Chheda & Anr.] .. Petitioners/Applicants

vs.

Taldhvaj Properties Pvt. Ltd. & Anr.] .. Respondents

Mr.Karl Tamboli a/w Nenty Thakkar i/b Tushar Goradia for the
Petitioners/Applicants.

Mr.Mayur Khandeparkar a/w Devansh Bheda i/b Purnanand & Co. for
the Respondents.

CORAM : BHARATI DANGRE, J

DATE : 21st February, 2023.

P.C.

1] The Arbitration Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 alongwith Arbitration Application under Section 11 of the said Act, emanate out of partnership entered between the parties vide the Deed of Partnership dated 21.12.2009. The initial Deed of Partnership was entered between three Partners and the business decided to be carried on was real estate development and construction and business venture to run by the firm in the name and style of M/s.Neetnav Constructions.

By Deed of Retirement dated 06.07.2003, three of the partners retired and Respondent No.2 was admitted into the partnership firm.

The parties to the present proceedings are thus the current partners who decided to redevelop two properties.

2] The Petitioners/Applicants were admitted into the Partnership Firm on 14.04.2010 and there is no dispute that the Partnership Deed comprise of an Arbitration clause for referring the disputes/differences arising between the partners to a Sole Arbitrator.

Subsequently, in the year 2021, the Partnership was converted to Princecare Amaraa LLP ("LLP") which came to be registered with the Registrar of Firms.

3] The learned counsel for the Respondent would submit that it was agreed that the Respondents who were 25% partners, would be permitted exit, and several settlement meetings and joint discussions took place between the parties. However, all of a sudden, they were informed that they will not be permitted exit and requested them to co-operate and execute LLP Agreement. In any case, the disputes arose between the parties

4] Considering the nature of disputes that have arisen between the parties which undisputedly could be resolved through Arbitration as contemplated in the Partnership Deed, I do not deem it appropriate to grant relief as sought in Section 9 Petition, wherein, the Petitioner is desirous of executing and registering the LLP Agreement.

5] Looking to the nature of disputes, I deem it fit that the parties shall be relegated before the Sole Arbitrator, where it would be permissible for the Petitioner to convert the Petition filed under Section 9 into an Application filed under Section 17 and seek necessary relief.

6] Since the arbitration clause is not in dispute and arbitration has already been invoked, I deem it appropriate to appoint a Sole

Arbitrator, who shall permit to treat the Petition filed under Section 9 by the Petitioner as Application under Section 17 of the Act of 1996. On request being made for urgent hearing of the Application, the Application shall be disposed off by offering an opportunity to the other side to oppose the Application.

The learned counsel for the Petitioner is at liberty to file Reply/Counter-claim before the learned Arbitrator, which shall form the part of the proceedings.

Hence, the following order :

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Mr.Ankit Lohia, Advocate, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties arising out of Deed of Retirement dated 06.07.2013.

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

(c) Disclosure : The learned Arbitrator, within a period of 15 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.

(d) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 19/03/2023. The

Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication information of the parties : Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(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) Fees : The learned Arbitrator shall be entitled for the fees as per the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) 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.

(j) All contentions of both sides are left open to be raised by the respective parties before the Arbitral Tribunal, in accordance with law.

Commercial Arbitration Petition and Commercial Arbitration Application stand disposed off in the aforesaid terms.

[BHARATI DANGRE, J]