

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

**ARBITRATION PETITION NO.272 OF 2024**

Deepak Doongersinh Danthi & Anr.

... Petitioners

V/s.

Tropicana Leisure Hospitality Private Limited

& Anr.

... Respondents

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Mr. Ashish Kamath, Senior Advocate a/w Aurup Dasgupta, Rohan Kadam, Sonam Ghiya & Drashika Hemnani i/by M/s. Jhangiani, Narula & Associates for the Petitioners.

Mr. Tushad Kakalia a/w Riddhi Badeka i/by Veritas Legal for Respondent Nos.1 and 2.

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**CORAM : ARIF S. DOCTOR, J.**

**DATE : 3RD SEPTEMBER 2024**

**P.C. :**

1. After the matter was argued at some length, Learned Counsel, on instructions from their respective clients, submitted that their clients are ready to submit their disputes and differences that have arisen between the parties under the Memorandum of Understanding dated 20<sup>th</sup> March 2013 to arbitration.

2. Learned Counsel appearing on behalf of the Respondents submits that all rights and contentions of Respondent No.2 be kept open since Respondent No.2 is not party to the Memorandum of Understanding. Mr. Kadam, Learned Counsel appearing on behalf of the Petitioners did not oppose.

3. Hence, I appoint Justice S. J. Kathawalla, Former Judge of this Court to act as the Sole Arbitrator on the following terms, to this parties have no objection.

#### **TERMS OF APPOINTMENT**

- (a) Appointment of Arbitrator:** Justice S. J. Kathawalla (Former Judge of this Court) is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.
- (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      Justice S. J. Kathawalla, Former  
Judge of this Court**

*Address* 43, Free Press House, 4<sup>th</sup> Floor,  
215, Free Press Journal Marg,  
Nariman Point, Mumbai – 400  
021.

*Mobile* 9619180563

*Email* skathawalla@gmail.com

- (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 Petitioners 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 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.
  - (iii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (h) **Fees.** Since the appointment of the Arbitrator is by consent, the arbitral tribunal's fees shall not 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.

4. It is made clear that all rights and contentions of Respondent No.2 shall expressly be kept open.

5. Furthermore, Learned Counsel for the Respondents also makes a statement that presently Respondents do not wish to deal with the said bungalow (Villa) as also land in any manner and in the event if they desirous to do so, four weeks advance notice shall be given to the Petitioners in writing. The statement is accepted and continued until disposal of Section 17 Application.

6. Section 17 Application shall be heard and disposed of as expeditiously as possible, subject to exigency of the Tribunal.

7. The Petition is disposed of in these terms. No costs.

**(ARIF S. DOCTOR, J.)**