

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

COMMERCIAL ARBITRATION PETITION NO. 257 OF 2024

Manohar Namdev Kadu and Anr. ...Petitioner

*Versus*

Heeralal Meghraj Doshi and Ors. ...Respondents

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**Mr. Anil Anturkar, Senior Advocate, a/w Mr. Mandar Limaye, Ms. Sudhanva Bedekar, Mr. Atharva Date, Mr. Tanaji Mhatugade, Mr. Swapnil Shanbhag and Ms. Kashish Chelani, for the Petitioner.**

**Mr. Rupesh Dubey, a/w Mr. Sanjay Mishra for Respondent Nos. 3 and 4.**

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CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON: APRIL 7, 2025

PRONOUNCED ON: OCTOBER 15, 2025

**JUDGEMENT:**

**Context and Factual Background:**

1. This is a Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 (“*the Act*”) challenging an order dated February 28, 2024 (“*Impugned Order*”) passed under Section 17 of the Act, and

has remained on the docket of this Court since March 2024. The Petition was taken up for final hearing by consent of the parties.

2. The Petitioners, Manohar Namdev Kadu (“**Kadu**”) and his son Vaibhav Manohar Kadu (collectively, “**Petitioners**”) are in partnership with the Respondent No. 1, Hiralal Meghraj Doshi (“**Doshi**”) and other Respondents (collectively, “**Other Partners**”) in a partnership firm called M/s Sunrise Enterprises (“**Firm**”). The Petitioners were admitted into the partnership on May 28, 2019 by execution of a Deed of Admission-cum-Reconstitution (“**Partnership Deed**”).

3. The Firm was to construct a building called Kinjal Paradise on a plot of land at Khargar, Navi Mumbai, that had been initially leased to Kadu by CIDCO via a Lease Deed dated December 3, 2010. Well before the Petitioners were admitted into partnership in the Firm, by a Memorandum of Understanding dated December 4, 2010, Kadu had relinquished his rights to the plot of land for development by the Other Partners as the transferees, in consideration for a right to 50% of the constructed area in Kinjal Paradise, which was sought to be constructed. Thereafter, the parties executed a tripartite agreement, including with CIDCO, on December 6, 2010 whereby Kadu relinquished all his rights to the land in favour of the Firm.

4. The Partnership Deed allocated pre-identified units to each Partner, which was set out in the annexures to the Partnership Deed under Clause 19(L) to Clause 19(R). Under Clause 19(J), it was agreed that the bank account of the Firm would be operated by Doshi. Under Clause 19(S), each partner was free to transfer or create third party rights on the units allocated to the respective partner without any interference from the other partners. The proceeds were to be brought to the bank account of the Firm. In the event of a breach of the provisions of Clause 19(S) by a partner, the other partners of the Firm would not be responsible or liable to any purchaser or allottee to whom the units were agreed to be sold by the partner concerned.

5. Disputes and differences broke out between the parties and this led to arbitration by a Learned Sole Arbitrator.

**Contentions of the Parties:**

6. I have heard Mr. A.V. Anturkar, Learned Senior Advocate on behalf of the Petitioners and Mr. Sanjay Jain, Learned Advocate on behalf of Doshi. With the benefit of their verbal and written submissions, I have examined the material on record that was available to the Learned Arbitral Tribunal.

7. The core issue raised by Mr. Anturkar is that the Learned Arbitral Tribunal had granted a relief that went way beyond preservation and protection of the subject matter of the arbitration agreement because it directs the Petitioners to deposit, in the aggregate, a sum of Rs. ~10.08 crores in the bank account of the partnership firm, when the prayer in the Section 17 Application was for deposit of Rs. ~6.35 crores, as a protective measure. This, it is contended, constitutes grant of relief in excess of what was sought and therefore liable to be set aside.

8. It is also contended by Mr. Anturkar that under Section 17, a direction to deposit monies cannot be granted when the liability itself is disputed. Towards this end, reliance is placed on a judgement of the Supreme Court in *Evergreen Landmark*<sup>1</sup>. The contention is that when the amount involved is disputed, there cannot be a direction to make a deposit of the disputed amount. Section 17(1)(ii)(b) only permits securing the amount in dispute, and where a money claim is involved, and that claim is disputed, a direction to deposit would go way beyond a direction to secure the amount. The contention is that preservation of property by way of custody or sale of goods is covered by Section 17(1)

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<sup>1</sup> *Evergreen Landmark Pvt. Ltd. Vs. John Tinson and Company Pvt. Ltd. – 2022 Live Law Supreme Court 389*

(ii)(a), which stands on a different footing, while under Section 17(1)(ii) (b), securing the amount is the relief contemplated and that can never be elevated to deposit of the amounts into the bank account of the Firm.

9. Mr. Anturkar would submit that Clause 19(S) of the Partnership Deed specifically contemplated that the only consequence of a partner not depositing the proceeds of the sales effected by him in the bank account of the Firm would be that the other partners would not be liable to third parties to whom the sales are effected. Learned Senior Advocate would submit that every partner understood the Partnership Deed to mean an unfettered right to sell the units allocated to them. Therefore, the conduct of the parties being consistent with unanimous understanding of the partners, it is inappropriate to direct the deposit of the amounts into the account of the Firm, which is hardly protective relief and more in the character of near-final relief. He would submit that the manner in which the Impugned Order operates renders it to be an “*almost*” interim award, which is impermissible.

10. In sharp contrast, Mr. Sanjay Jain on behalf of Doshi would submit that the Petitioners had full notice of the reliefs sought in the Section 17 Application, which had been originally filed as a Section 9 Petition, and there has been nothing granted in excess of what was

sought. The prayers were not only for deposit of Rs. ~6.34 crores but also for deposit of an aggregate sum of Rs. ~13.33 crores, which was the estimated market value of the units sold by the Petitioners. He would point to the pleadings and the reliefs sought, to indicate that the relief granted is not in excess of what was sought. The direction to deposit the sums in the bank account of the Firm is not a direction to pay over the amounts to the Respondents, Mr. Jain would contend, essentially indicating that the Firm had liabilities of Rs. ~20.04 crores to meet and if every partner, misreading the provisions of Clause 19(S) were to take money away from the Firm, the property of the Firm would be in jeopardy, and this has been rightly protected by the Learned Arbitral Tribunal. Withdrawals from the Firm's account without unanimous consent, he would point out, has also been prohibited by the Learned Arbitral Tribunal, making the Impugned Order reasonable and objective.

11. Mr. Jain would also point to the actions and conduct of some of the Other Partners being similar to the Petitioners' conduct and they have all been directed to bring back the proceeds of what they sold and realised, into the Firm's account. He would also point to partners having brought the proceeds into the Firm on their own too. Therefore,

he would submit that it was wrong to indicate that all partners had understood the Partnership Deed in the same manner as is being canvassed by Mr. Anturkar.

**Analysis and Findings:**

12. I have considered the provisions of the Partnership Deed that fell for consideration before the Learned Arbitral Tribunal. The key provisions in the Partnership Deed pressed into service by the Petitioners are extracted below:-

**Clause 19K**

*The partner hereto have decided to distribute between themselves the flats / shops / premises /car parking spaces that shall come to the share of each of the partner and the partner have accepted the formula arrived at for effecting such distribution without any protest and/or demur. Each of the partner here to shall be entitled to flats / shops / premises /car parking spaces as set out hereinafter and it is agreed and understood between the partner that the allocation is fair and reasonable and also commensurate with their respective shares in the profit and loss of the partnership firm.*

**Clause 19S**

*The partner hereto agree and understand that each of the partners shall be entitled to execute agreements necessary to sell or lease or mortgage or given leave and licence basis or create any third party*

rights or deal with the flats / shops / premises / car parking spaces which each of the partner is entitled in the manner as may be deemed fit and proper by the concerned party and there shall be no interference by the other partner in any manner whatsoever to such dealing by the concerned partner. However it is expressly agreed and understood and accepted by the partner hereto that the proceeds received by the concerned partner from the sale of the flats / shops / premises /car parking spaces coming to his share shall be received in the name of the firm i. e . M/s Sunrise Enterprises and shall be deposited in the aforesaid account of the firm with HDFC Bank Ltd. If there is any default by the concerned partner of the obligations contained in this clause , the other partner shall not be responsible or liable to any purchaser /allottee from such partner in respect of flat / shop / premises / car parking space sold/allotted by the concerned partner.

[Emphasis Supplied]

13. A close examination of the Impugned Order would indicate that the Learned Arbitral Tribunal had stipulated an arrangement on October 30, 2025 to preserve and protect the Firm by directing that the parties shall work together to get the bank account of the Firm de-frozen, and to ensure that any withdrawal and expenditure from the account would be only with the unanimous consent of all parties. For such consent, upon receipt of notice, if no partner were to raise any objection to a proposed expense within 48 hours, it would be presumed that there is no objection. If any partner were to raise an objection, the

Learned Arbitral Tribunal would need to be approached, and appropriate orders would be passed, granting or rejecting permission for the expenditure.

14. The Learned Arbitral Tribunal has also directed multiple partners who had not deposited the proceeds of sale of the units allocated to them, including Doshi, to deposit the amounts received as proceeds of transfer of their respective units, in terms of disclosures made them, into the bank account of the Firm. In Paragraph 20 of the Impugned Order, the Learned Arbitral Tribunal has compiled a unit-wise table and summary of each and every unit allocated to the respective partner; the status of whether it is sold with the dates of sale; and consideration received – all from the books of the Firm. It is seen that many of the transactions led to the proceeds being deposited in the bank account of the firm while even Doshi and a few other partners had merrily kept the proceeds with themselves, without depositing the same in the bank account of the Firm.

15. Thereafter, comparing this with the affidavits of disclosure made by each party, the Learned Arbitral Tribunal has found the specific monies received by such partners in their respective personal accounts and has directed them to bring it into the Firm. Towards this

end, Clause 19(S) has been interpreted by the Learned Arbitral Tribunal as containing a right to be free to sell units with an attendant obligation to bring the proceeds into the bank account of the Firm. The Learned Arbitral Tribunal has stated that it would be manifestly unfair for some partners to presume that the sale proceeds are all theirs, ignoring that it is after discharging the liabilities of the Firm, that the profits would be arrived at, in which partners would be entitled to their respective shares.

16. Having examined the record and the reasoning of the Learned Arbitral Tribunal, I find no reason to disagree with the outcome in the Impugned Order. Even a plain reading of Clause 19(S) would indicate that it has two primary components and a third ancillary component. The first is the right of each partner to freely sell the units earmarked for him without interference from the other partners. The second is the attendant obligation to bring the proceeds into the account of the Firm. I am not persuaded by Mr. Anturkar's reading of the third component of Clause 19(S), which is read by him as a license never to bring the proceeds into the Firm's bank account, with the only consequence being that such partner alone would be liable to third parties to whom the sales are made.

17. The third component, which provides for a consequence of not bringing funds into the Firm's bank account absolves the other partners from being responsible for claims made by the counterparties against the partner who sold his units. That would in fact underline the position that all partners of an unlimited liability firm would indeed be on the hook and liable for claims made by counterparties in respect of every unit sold by every partner. The third component of Clause 19(S) is only a disincentive to a partner against violating the obligation to bring the proceeds into the Firm's account by indicating that such partner who sells and does not bring the proceeds into the Firm would remain solely liable for any disputes with the counterparties. To read this as the only consequence, words to that effect would be needed in that provision. Moreover, to read this third element in the manner canvassed on behalf of Kadu would render the second element meaningless – the obligation to bring the proceeds into the Firm's account would be wiped out.

18. I am not convinced at all that the Learned Arbitral Tribunal has done anything wrong. Taking cognisance of Doshi's manner of handling of the Firm's finances, as complained of by the Petitioners, the Learned Arbitral Tribunal has directed that no withdrawals of any

nature would be permitted from the Firm's bank account without unanimity. In the absence of unanimity, the Learned Arbitral Tribunal may be approached and he could then permit or reject the withdrawal. No fault can be found with such a protective and preservative package of measures.

19. I am also not convinced that the Impugned Order is an “*almost* award”, adopting the phrase coined on behalf of Kadu. The parties were asked to disclose the quantum of proceeds realised from what they were entitled to sell. The parties made the disclosures. These disclosures form the basis of the directions. There is no quarrel about what was earned by the Petitioners from the sale of the units allocated to them. Therefore, the reliance on *Evergreen Landmark* is misplaced – there, the dispute was whether lease rentals stood excused because of the Covid-19 Pandemic, and the direction to deposit the lease rentals, on facts, did not appeal to the Supreme Court, since it was yet to be adjudicated if the lease rentals were even payable. In sharp contrast, in the facts of this case, there is no dispute about the amount involved. The amount directed to be deposited is but the amount disclosed by the very parties, including the Petitioners, as amounts having been received by them.

20. Indeed, the subject matter of the arbitration agreement (unlike in *Evergreen Landmark*) is the partnership firm, its business and its operations, along with the bundle of rights and liabilities connected with running the Firm. The subject matter of protection is the property of the Firm. Proceeds of sale of the Firm's assets have to be realised, expenses of the Firm have to be incurred, taxes attracted have to be paid, and then the partners would get their entitlement to profits of the Firm. The sovereign agency to sell specified units was a conscious choice that the partners agreed upon. That cannot be extrapolated into a situation where no partner had to bring any proceeds from any sale whatsoever into the Firm, rendering it impossible for the Firm to run.

21. The contention that the Learned Arbitral Tribunal could not be bothered about liabilities owed to third parties and must only focus on entitlements of each partner does not at all appeal to me. The Firm has obligations and liabilities, which if not paid, each of the partners would be liable to the outside world for the obligations owed by the Firm. The Firm, not being a limited liability partnership, each partner has unlimited exposure to the liabilities of the Firm, subject of course to the Partnership Deed (for apportionment of such liability). Within that

framework, the parties have agreed on the methodology, which includes the two clauses extracted above.

22. Indeed, the parties had agreed that the Firm's account would be operated by Doshi. Kadu has serious grievances with the lack of transparency in handling of the account by Doshi. This has been provided for, by continuing the arrangement of requiring unanimous approval for debits to the Firm's bank accounts. So also, it was Doshi's case that the market value of the assets sold by the Petitioners was higher, but the Learned Arbitral Tribunal has directed that only the amounts admittedly disclosed as proceeds by the Petitioners, have to be brought into the Firm in compliance with Clause 19(S) of the Partnership Deed, and that too, with the attendant protection of prohibiting withdrawals. This cannot be faulted as being an unreasonable or excessive measure or a measure in the teeth of a pending dispute on quantum.

23. For the very same reasons articulated above, the contention about the fine distinction between Section 17(1)(ii)(a) and Section 17(1)(ii)(b) does not provide any support to the Petitioners' case. The subject matter of the arbitration agreement is the business of the Firm. The business of the Firm includes proceeds of sale and necessary incurring

of expenses. That is what is being protected. The fine distinction sought to be made could have even been amenable to consideration if there had been a direction to pay over the amounts to the other partners. All that the Learned Arbitral Tribunal has done is to secure the monies of the Firm from its partners who are merrily pocketing the sales turnover of the Firm. The Impugned Order is a fair, reasonable and an appropriate preservative and protective measure.

24. For all the aforesaid reasons, I see no case to interfere with the Impugned Order. The appeal in this Petition is *dismissed*, and interim applications, if any, stand *finally disposed of*. Considering the sheer efflux of time since this Petition was filed and before it was taken up for consideration, and the passage of time since the time judgement was reserved, I am not considering award of costs at this stage. Needless to say, the Learned Arbitral Tribunal may consider imposition of such costs as it considers appropriate for this round of litigation as well, when dealing with the arbitration proceedings.

25. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

**[SOMASEKHAR SUNDARESAN, J.]**

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October 15, 2025