



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION (L) NO.12427 OF 2025

Mahindra Mangilalji Jain **...Applicant**
V/s.

M/s Radha Construction Co and Ors. **...Respondents**

WITH

COMMERCIAL ARBITRATION PETITION (L) NO.8173 OF 2025

Mahindra Mangilalji Jain **...Petitioner**
V/s.

M/s Radha Construction Co and Ors. **...Respondents**

WITH

INTERIM APPLICATION (L) NO. 30822 OF 2025

IN

COMMERCIAL ARBITRATION PETITION (L) NO.8173 OF 2025

M/s Radha Construction Co and Ors. **...Applicants**
V/s.

Mahindra Mangilalji Jain and Ors. **...Respondents**

Mr. Gauraj Shah with Ms. Aakansha Anand i/b M/s. Mahesh Menon & Co. for the Applicant.

Mr. Abhishek Kothari with Mr. Nilesh Gala, Mr. Manish Gala & Mr. Minil Shah for Respondent Nos. 1, 2, 5 and 6 and for Applicant in IAL/30822/2025.

Mr. Kavyal P. Shah with Ms. Gunjan Shah for Respondent No.8.

Mrs. Naina Poojary, Master (Adm.) with Mrs. Mrunal Manjrekar, Section Officer, Court Receiver, High Court, present

CORAM: SANDEEP V. MARNE, J.

JUDG. RESD. ON: 13 FEBRUARY 2026

JUDG. PRON. ON: 04 MARCH 2026

JUDGMENT:

1) This is an Application filed by the Applicant under Section 11 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) for appointment of an Arbitrator alongwith Petition under Section 9 for seeking interim measures before commencement of the arbitral proceedings. In Section 9 Petition, Petitioner seeks direction against the Respondents for execution of registered Agreement/Deed for Sale of premises admeasuring 5,000 sq.ft. as per Allotment Letter dated 16 October 2017 as agreed under the Memorandum of Understanding dated 16 October 2017 (**MOU**). Petitioner also seeks furnishing of Bank Guarantee for amount of Rs.17,60,00,000/- for securing the amount payable to him under Memorandum of Understanding dated 16 October 2017. The Petitioner also seeks injunction from creating third party rights in respect of the Petition property as well as disclosure in respect of transactions effected for various premises in the building named 'Ventura Commercial Hub'.

FACTS

2) Respondent No.1 is a Partnership Firm engaged in the business of developing properties in India. The Firm initially comprised of Respondent Nos.2 to 5 as the partners vide Partnership Deed dated 1

October 2010. The Firm has undertaken a project for construction of commercial building named 'Ventura Commercial Hub' at land bearing Survey No.314 Hissa No.4 C. T. S. Nos.460A, 460/1 to 214, 461, 461/1 to 11, admeasuring 6823.5 sq.m. at Village-Malad, Taluka -Borivali, Mumbai Suburban District. By Agreement dated 28 January 2013, Respondent No.6 was inducted as incoming partner in the Firm. Respondent Nos.2 to 6 approached the Petitioner through Respondent No.7. Petitioner and Respondent No.7 are partners in M/s. Manibhadra Developers. Respondent Nos. 2 to 7 represented to the Petitioner that the construction of the project was ongoing and requested him to invest monies in the project. By Deed dated 11 February 2015. Petitioner and Respondent No.7 were admitted as partners for Respondent No.1-Firm. According to the Petitioner, he initially invested amount of Rs.1,84,59,000/- in the year 2014-15. He was given 20% share in the partnership firm. The Petitioner claims to have made further payment of Rs.62,40,000/- after his admission in the Firm and this is how his total contribution in the Firm was Rs.2,46,99,000/-. By further Deed dated 11 December 2015, Respondent No.8 was admitted in the Firm as incoming partner and according to the Petitioner, his 20% share in the Firm remained unaffected.

3) According to Petitioner, Respondent No.7 approached him on 16 October 2017 and called upon him to retire from the Firm if he was not willing to invest further amount. Accordingly, Retirement-cum-Partnership Deed dated 16 October 2017 was executed, under which Petitioner, Respondent Nos.7, 3, 4 and 8 retired from the Partnership Firm and Respondent Nos.2, 5 and 6 remained as continuing partners.

On the same day, i.e., 16 October 2017, Deed of Cancellation of Admission and Partnership Deed was executed for retiring the Petitioner from the Firm. On 16 October 2017, MOU was executed under which the continuing partners agreed for payment of 17,60,00,000/- to the outgoing partners for their retirement. According to the Petitioner, all the three documents were executed simultaneously on 16 October 2017. Additionally, Allotment Letter dated 16 October 2017 was issued by the continuing partners in respect of area of 5000 sq.ft. in the project as agreed under the MOU. The continuing partners also issued cheques in the name of the Petitioner as agreed in the MOU. According to the Petitioner, the three agreements, allotment letters and the cheques were kept in Escrow Account with the Advocate as agreed in clause 8(e) of the MOU. Petitioner kept on demanding for payment of amount agreed under the MOU and the Respondent and continuing partners started giving flimsy excuses and delayed payment due to him. Another Memorandum of Understanding was executed in November 2019 (**MoU-2**), under which Rajendrakumar Hastimal Singhvi released all his right, title and interest under the three documents in favour of the Petitioner. Petitioner claims to have obtained rights of Rajendrakumar Singhvi under the three Agreements in pursuance of MoU-2 executed in November 2019. Another Memorandum of Understanding dated 20 February 2020 (**MoU-3**) was executed under which Rajendrakumar Singhvi once again released his right, title and interest in the three documents in favour of the Petitioner. He also executed declaration-cum-indemnity on 20 February 2020 confirming that the Petitioner is entitled to recover amount of Rs.17,60,00,000/- from the continuing partners.

4) Petitioner demanded the amount of Rs. 17.60 crores and also demanded the three documents and allotment letter kept in Escrow Account vide letter dated 9 August 2024. However, the Advocate with whom the documents and allotment letters were kept in escrow, informed the Petitioner by letter dated 27 August 2024 that the same were handed over to Respondent No.5 under instructions of Respondent No.7. Petitioner issued notice dated 10 September 2024 followed by another notice dated 7 October 2024. Continuing partners (Respondent Nos.2, 5 and 6) sent reply dated 21 October 2024. Petitioner thereafter filed Criminal Complaint with the police. According to the Petitioner, the continuing partners have entered into arrangement with M/s. Real Infrastructure for development of the project.

5) In the above background, the Petitioner first filed Commercial Arbitration Petition (L) No.8173 of 2025 seeking interim measures in terms of the following prayers:

a. Pending the hearing and final disposal of the Arbitration Proceedings, this Hon'ble Court be pleased to pass an Order directing the Respondents, to execute or arrange to execute a registered Agreement/Deed for Sale, for transfer of the Premises, admeasuring 5000 square leet (carpet area) as per the Allotment letter 16th October, 2017, in the building, "Ventura Commercial Hub". which has been constructed in the building comprising of Petition Property, in lieu of the part amount of Rs.10,50,00,000/-, to be paid by the Respondents to the Petitioner, under the MOU dated 16th October 2017, wherein the Petition Premises, was given as security.

i. Pending the hearing and final disposal of the Arbitration Proceedings, this Hon'ble Court be pleased to pass an Order directing the Respondents, to furnish Bank Guarantee of a Nationalized Bank or an Scheduled Bank in favour of the Petitioner, for the entire

amount of Rs. 17,60,00,0001 (Rupees Seventeen Crores and Sixty Lakhs Lakhs Only), which the Respondents are liable to pay to the petitioner, under the Memorandum of Understanding dated 16th October, 2017, pursuant to the Deed of Admission and partnership dated 11th December 2015, Retirement cum Partnership Deed dated 16th October, 2017, Agreement dated 16th October, 2017, Deed of Cancellation dated 16th October, 2017.

j. Pending the hearing and final disposal of the Arbitration Proceedings, this Hon'ble Court be pleased to pass an Order and Injunction restraining the Respondents, their servants and agents from parting with possession of or creating any third party rights in respect of the Petition property or any part thereof.

k. Pending the hearing and final disposal of the Arbitration Proceedings, this Hon'ble Court be pleased to pass an Order and Injunction directing the Respondents, their Office Bearers, servants and agents to reserve and keep reserved a carpet area equivalent to 5000 square feet in the building comprising of the Petition Property.

l. Pending the hearing and final disposal of the Arbitration Proceedings, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Mumbai, with all powers under the Civil Procedure Code, in respect of the Petition Property as per the Allotment Letter dated 16th October, 2017, or carpet area equivalent to 5000 square feet in the building "Ventura Commercial Hub", comprising of the Petition Property.

m. Pending the hearing and final disposal of the Arbitration Proceedings, this Hon'ble Court be pleased to appoint the Petitioner as the agent of the Court Receiver, High Court, Mumbai, in respect of the Petition Property or a carpet area of 5000 square feet in the building, "Ventura Commercial Hub", comprising of the Petition Property. without payment of any royalty or compensation till the disposal of the Arbitration proceedings, to be initiated by the Petitioner.

n. Pending the hearing and final disposal of the Arbitration Proceedings, this Hon'ble Court be pleased to direct the Respondents disclose on affidavit all the particulars of third party interest created in the entire building "Ventura Commercial Hub", comprising of the Petition property.

o. Pending the hearing and final disposal of the Arbitration Proceedings, this Hon'ble Court be pleased to direct the Respondents to furnish copies of all papers and documents relating to creation of

third party interest in the entire building, "Ventura Commercial Hub", comprising of the petition Property.

p. Interim and ad-interim relief-s in terms of prayers (a) to (o) be granted;

q. Cost of this Petition be provided for ;

r. Such further and other reliefs in the nature and circumstances of the case be granted ;

6) Petitioner thereafter filed Commercial Arbitration Application (L) No. 12427 of 2025 for appointment of Arbitrator. Respondent Nos.1 to 5 have filed affidavit-in-reply denying existence of any arbitration agreement in the MOU. Respondent No.7 has filed a separate affidavit-in-reply also denying the existence of arbitration agreement.

7) On 28 March 2025, this Court passed ad-interim order in Section 9 Petition directing Respondents to earmark and keep aside area of at least 5000 sq.ft. on any floor of the building. Respondent Nos.1 to 5 filed Commercial Arbitration Appeal (L) No.11956 of 2025 challenging ad-interim order dated 28 March 2025. The Appeal was disposed of by order dated 23 April 2025 refusing to interfere in the ad-interim order, but granting liberty to the Appellants therein to raise all contentions for seeking vacation of ad-interim order. On 10 September 2025, an affidavit of compliance on behalf of Respondent No.1 has been filed stating that following flats have been earmarked towards compliance with ad-interim order dated 28 March 2025:

Sr. No.	Unit No.	Area (sq.f.t)
1.	1305	1285
2.	1009	605
3.	1110	655
4.	1101	1240
5.	1001	1240

8) Respondent No.1 undertook not to create any third-party rights in the said 5 earmarked units. This Court passed further interim order dated 10 July 2025 appointing Court Receiver and directing the Receiver to take physical possession of the said 5 units. This Court directed filing of further affidavit indicating precise status of units available in the project. Accordingly, Respondent No.1 has filed further compliance affidavit dated 16 September 2025, producing mortgage deed executed with Abhudaya Bank dated 28 March 2019 for mortgage of the entire project. It has also produced with the Affidavit, copy of the Development Agreement / Joint Venture with M/s. Real Infrastructure Company on 5 March 2018 under which 40% of the sale area is to be given to M/s. Real Infrastructure Company. Respondent No.1 has also produced a list of sold and unsold inventory in the project.

9) Both Section 9 Petition as well as Section 11 Application are taken up for analogous hearing.

10) Mr. Gauraj Shah, the learned counsel appearing for the Petitioner submits that there clearly exists an agreement to arbitrate between the parties. That the principal/mother document between the parties is the Retirement cum Partnership Deed dated 16 October 2017,

which contains arbitration clause. That the three documents of Retirement-cum-Partnership Deed, Deed of Cancellation and MOU are executed on the same day between the same parties. That all the documents were kept in escrow with the advocate. That therefore the case involves execution of multiple documents to execute a composite transaction. That therefore presence of arbitration agreement in the Deed of Retirement is sufficient to make a reference to arbitration and mere absence of arbitration clause in the MOU is irrelevant. That all the three documents make references to each other. That the MOU has been executed for the purpose of giving effect to the Retirement-cum-Partnership deed dated 16 October 2017. That the consideration of Rs.17.60 crores was agreed for the purpose of exit of the Petitioner from the partnership. That therefore MOU is not the principal/mother document, nor any independent transaction is effected through the same. That MOU and Deed of Retirement ultimately constitute a composite transaction.

11) Mr. Shah further submits that the manner in which the parties corresponded with each other after execution of the three documents is also relevant. That in response to Petitioner's notices dated 10 September 2024 and 7 October 2024, the firm replied on 21 October 2024 admitting that the premises were allotted under the MOU in lieu of consideration payable to retiring partners. That Respondent No. 5 also admitted in the letter dated 28 January 2025 that MOU was executed for the purpose of reducing in writing the formalities of monetary adjustments towards retirement from the firm. That it is more than apparent that parties always intended composite reading of the

three documents as a part and parcel of one coherent transaction. That therefore the arbitration clauses in the Admission-cum-Partnership Deed and Retirement-cum-Partnership Deed govern the disputes between the parties for which reference needs to be made to arbitration.

12) Mr. Shah further submits that it is repeatedly held that where multiple documents form part of a single transaction, the arbitration clause in one extends to other, particularly when there is close nexus in the subject matter, execution and purpose. He relies on judgment of the Apex Court in **Ameet Lalchand Shah and Ors. vs. Rishabh Enterprises and Anr.**¹ and the three Judges Bench decision in **Cox and Kings Ltd. vs. SAP India Pvt. Ltd. and Anr.**² approving the judgment in **Ameet Lalchand Shah** (supra). He also relies on the Constitution Bench judgment in **Cox and Kings Ltd. vs. SAP India Pvt. Ltd. and Anr.**³ and **ASF Buildtech Pvt. Ltd. vs. Shapoorji Pallonji and Company Pvt. Ltd.**⁴

13) Mr. Shah further submits that the allotment letter seeks to allot one contiguous premises admeasuring 5000 sq.ft. on the second floor of the building whereas the Respondent-firm has deliberately created third party interests in second floor premises with a view to defeat the claim of the Petitioner. He submits that allotment of smaller and scattered premises throughout the building in favour of the Petitioner would cause him financial loss and that such premises would not be sufficient for preserving the amount agreed to be paid to the

¹ (2018) 15 SCC 678

² (2022) 8 SCC 1

³ (2024) 4 SCC 1

⁴ (2025) 9 SCC 76

Petitioner under the MOU. He places on record a list of units in respect of which the Court Receiver can be appointed for preserving the interests of the Petitioner in a better manner. He alternatively submits that a reference to the Arbitral Tribunal be made granting liberty to the Petitioner to press for further interim measures.

14) The Petition is opposed by Mr. Kothari, the learned counsel appearing for the Respondent Nos. 1, 2, 5 and 6. He submits that the entire grievance of alleged cause of action flows purely out of the MOU dated 16 October 2017, which does not contain arbitration clause. That the MOU in fact records that breaches thereunder would constitute a default. That MOU contains 'entire agreement' clause and therefore no reference can be made to the other documents even if executed on the same day. He submits that neither by the principles of incorporation of reference nor by the principles of intertwined and/or composite agreements, arbitration agreement can be inferred in the present case. That the arbitration clause in the Retirement Deed is not specifically incorporated in the MOU and that therefore, mere reference to the Retirement Deed in the MOU is not sufficient for inferring existence of arbitration agreement. In support, he relies on judgment of the Apex Court in *M.R. Engineers and Contractors Pvt. Ltd. vs. Som Datt Builders Ltd*⁵.

15) Mr. Kothari further submits that by filing the present Petitions under Section 9 and 11 of the Arbitration Act, the Petitioner essentially seeks enforcement of Allotment Letter, the inception of

⁵ (2009) 7 SCC 696

which is in the MOU. That the Allotment Letter is not referable to the Admission Deed or Retirement Deed in any manner. That the principal/mother document in the present case is MOU, which does not contain arbitration clause. That therefore, the judgment of the Apex Court in *Ameet Lalchand Shah* (supra) has no application to the present case. He also relies on judgment of Division Bench of Karnataka High Court in *B. Prashanth vs. Ganesh S. Poojari*⁶ in support of his contention that jural relationship between the parties has come to an end with execution of fresh contract and that the MOU is something which is now sought to be enforced by the Petitioner. That the judgment of Karnataka High Court is confirmed by the Supreme Court by dismissal of the SLP.

16) Mr. Kothari further submits that the doctrine of election clearly applies in the present case and the Petitioner cannot be permitted to approbate and reprobate. That under the MOU, breach caused by Respondent Nos.2 and 6 gave option to the Petitioner to terminate the MOU, refund the money received by him and be reinstated as a partner of the firm. That the MOU itself provides for contractual remedies in the event of non-compliance. The Petitioner on the other hand has treated MOU as subsisting and has sought for reliefs in furtherance of performance of the same. That the Petitioner has not terminated the MOU but has sought its performance. That once performance of the MOU is sought, Petitioner cannot rely upon any other document for claiming existence of arbitration agreement. That the contingency of invoking arbitration agreement under Admission Deed or Retirement Deed would arise only if the MOU is terminated, which the

⁶ 2025 SCC OnLine Kar 15739

Petitioner has consciously not elected to do. That Petitioner is bound by his conscious election. In support, he relies on judgment of the Apex Court in **Union of India and Ors. vs. N. Murugesan and Ors.**⁷

17) Mr. Kothari also raised the issue of arbitrability, submitting that the Petitioner is seeking enforcement of the Allotment Letter and the exclusive jurisdiction in respect of Allotment Letter lies with MahaRERA on account of Sections 13 and 79 of the Real Estate (Regulation and Development) Act, 2016. In support, he relies on judgment of this Court in **Rashmi Realty Builders Pvt. Ltd. vs. Rahul Rajendrakumar Pagariya and Ors.**⁸ and order of the Supreme Court dismissing the SLP. Mr. Kothari would accordingly pray for dismissal of the Petitions.

18) Mr. Kavyal Shah appearing for Respondent No.8 submits that Respondent No.8 is not a signatory to the MOU and has no obligation to pay any consideration to pay to the Petitioner. That there is no claim against Respondent No.8 and is unnecessarily impleaded in the proceeding.

19) Rival contentions of the parties now fall for my consideration.

20) The first broad issue for consideration in the present Petition is about existence of arbitration agreement between the parties. Petitioner came to be admitted as partner of Respondent No.1-Firm vide

⁷ (2022) 2 SCC 25

⁸ 2024 SCC OnLine Bom 3871

Deed of Admission and Partnership Deed dated 11 February 2015, which was apparently notarised on 11 December 2015. Petitioner claims to have invested monies in the project undertaken by the partnership firm. However, Petitioner decided to exit the partnership firm and on 16 October 2017, four documents came to be executed as under :

- (i) Retirement cum Partnership Deed;
- (ii) Deed of Cancellation of Admission and Partnership;
- (iii) Memorandum of Understanding;
- (iv) Allotment Letter in respect of area admeasuring 5000 sq.ft .in favour of the retiring partners.

21) The four documents of 16 October 2017 were executed essentially to give effect Petitioner's exit from the partnership. There is no dispute to the position that the Retirement-cum-Partnership Deed dated 16 October 2017 contains arbitration clause no.13 as under :

13. Whenever any doubt difference or dispute shall arise between the partners or any of them or his or any of their executors or administrators or between their respective executors or administers touching these presents or the constructions hereof or any clause or thing herein contained or any account, valuation or division of assets, debts or liabilities to be made as herein before mentioned or any other thing in anyway relating to or concerning the partnership business or the affairs thereof or the rights, duties, liabilities of either party in connection therewith, the matters in such doubt, difference or dispute shall be referred to a single arbitrator of common choice of the parties hereto and in the event of the parties hereto not being in agreement as to single arbitrator of common choice then to Two Arbitrators one to be appointed by each of the parties to such doubt differences or disputes in accordance with and subject to the provisions of Indian Arbitration Act, 1940 or to any statutory modifications or re-enactment thereof for the time being in force.

22) However, the MOU dated 16 October 2017 does not contain arbitration clause. It is on this count that Respondent Nos. 1, 2, 5 and 6 oppose constitution of Arbitration Tribunal and seek dismissal of the Petition filed under Section 9 of the Arbitration Act.

23) The issue for consideration is whether the MOU is effected for giving effect to retirement of the Petitioner from the firm. To paraphrase, whether the Deed of Retirement and MOU are executed for effecting a common transaction and whether arbitration clause contained in the Deed of Retirement can be invoked for the purpose of claiming any rights flowing out of the MOU.

24) Under the Retirement-cum-Partnership deed, Petitioner has retired from the firm on 31 August 2017. Clause 7.(d) of the Deed of Retirement talks of settling of accounts and non-pendency of any liabilities or accounts outstanding to the retiring partners. Clause 7.(d) of the Deed of Retirement reads thus:

7.(d) The Retiring Partners and Continuing Partners have made and settled the accounts and that the Continuing Partners confirmed that there is no liabilities and accounts outstanding to the account of Retiring Partners.

25) Relying on above clause in the Deed of Retirement, it is contended by Mr. Kothari that the said document is a complete transaction in itself where the retiring partners specially admitted settlement of all rights and liabilities under the partnership. However, on 16 October 2017, a separate Deed of Cancellation is executed by which the earlier Partnership Deed dated 11 December 2015 came to be cancelled. The third document executed on 16 October 2017 is the MOU,

which specifically refers to Retirement cum Partnership Deed in recital no. "C" which reads thus :

C. The Outgoing Partners, i.e. (1) Shri Rajendrakumar HASTIMAL Singhvi, (2) Shri Mahindra Mangilalji Jain, have expressed their desire to retire from the said Partnership Firm by entering into a Retirement cum Partnership Deed dated ____ and releases all their share, right, title and interest in the business, of the said partnership firm.

26) The MoU provides for '*consideration payable for sale of partnership interest*' under which the outgoing partners were to be paid consideration of Rs.17.60 crores by the continuing partners. Clause 2 of the MOU reads thus:

2. Consideration:

The Continuing Partners have agreed and confirmed to pay to the Outgoing partners as consideration for the sale of the said partnership interest a mutually agreed full and final amount of Rs. 17,60,00,000/- (Seventeen Crore Sixty Lakhs Only/-) Payment of the said consideration is to be made as under.

a) Rs.10,00,000/- (Ten Lakhs Only) vide Cheque No. 001441 dated 17-10-2017 drawn on Bank of Baroda, Malad (East), Branch Mumbai, to Mr. Mahindra Mangilal Jain.

b) Rs. 3,55,00,000/- (Three Crore Fifty FiveLakhs Only/-) to be paid in cheque on execution of these presents of which by Cheque No. 0001439 dated 17-10-2017 drawn on Bank of Baroda, Malad (East) branch, Mumbai to Mr. Mahindra Mangilal Jain.

c) Rs. 3,55,00,000/- (Three Crore Fifty Five Lakhs Only/-) to be paid in cheque on execution of these presents of which by Choque No. 001440 dated 17-10-2017 drawn on Bank of Baroda, Malad (East) branch, Mumbai to Mr. Rajendra Hastimal Singhvi.

d) Rs. 2,00,00,000/- (Tivo Crore Only)is to be paid within three months from the date of execution of these presents by Cheque No. 674049 dated 17-01-2018, drawn on Bank of Baroda, Malad (East), Branch Mumbai, to Mr. Rajendra Hastimal Singhvi.

e) Rs. 2,43,01,000/- (Two Crore Forty Three Lakhs One Thousand Only) is to be paid within 3 months from the date of execution of the said Memorandum of understanding. by Cheque No. 674048 dated 17-01-2018 drawn on Bank Baroda, Malad (East), Branch Mumbai, to Mr. Mahindra Mangilal Jain

f) Rs.2,46,99,000/- (Two Crore Forty Six Lakh Ninety Nine Thousand Only) to be paid within 5 months from the date of execution of these presents by Cheque No.674045 dated 17-02-2017 drawn on Bank of Baroda, Malad (East), Branch Mumbai, to Manibhadra Developers.

g) Rs. 3,50,00,000/- (Three Crore Fifty Lakhs Only/-) is to be within 5 months from the date of execution of the said Memorandum of understanding by Cheque No. 0001436 dated 01-03-2018 drawn on Bank of Baroda, Malad (East), Branch Mumbai, to Mr. Mahindra Mangilal Jain.

h) The Outgoing Partners have agreed to accept the post dated cheques with the clear understanding that the payment of the Balance Consideration of Rs.10,50,00,000/- (Ten Crore Fifty Lakhs Only/-) shall also be secured by the Continuing Partners by providing a further security by way of 1 fully paid up Allotment Letters the value of which aggregates to the Balance Consideration, allotting 5000 sq.ft. carpet area Commercial Units to the Outgoing Partners, as more specifically described hereunder. The details of the 1 fully paid Allotment letters are as below:

i) Allotment letter No. 1 is executed in favour of Outgoing Partner towards security for Payment of Rs.10,50,00,000/- (Ten Crore Fifty Lakhs Only/-) to allot in favour of Outgoing Partner one Commercial Unit in the building proposed to be constructed on a portion of the said property totally admeasuring about 5000 sq. feet of carpet area ("the Commercial Unit") on or about 2nd Floor of the building to be constructed on the said property.

j) The Parties hereto agree and confirm that the agreed consideration is inclusive of capital contribution as well as loan and other capital of the Outgoing Partners in the said Firm.

27) Thus, under Clause 2 of the MOU, the continuing partners agreed to pay to the outgoing partners consideration of Rs.17.6 crores for their retirement from the firm. It appears that certain post-dated cheques were issued by the continuing partners.

28) In Clause 2(h) of the MOU, it is agreed that the balance consideration of Rs.10.50 crores would be secured by the continuing partners by providing security of an allotment letter, thereby allotting the premises admeasuring 5000 sq.ft. carpet area and it was agreed to issue allotment letter allotting area of 5000 sq.ft. (carpet) on or above 2nd floor of the building. Clause 7 of the MOU stipulated the consequences for default and stipulates thus :

7. It is hereby expressly agreed, declared and confirmed by the Continuing Partners that:

a. Upon any of the default by Continuing Partners on the payments as agreed herein, then in that event the Outgoing Partner shall at their sole discretion terminate this MOU and on such termination the said Deed of Retirement cum Admission of the said Partnership firm executed simultaneously hereto shall stand terminated and or cancelled and the Outgoing Partners shall be reinstated as partners with their original Profit and loss ratio which existed before their retirement from the said Partnership Firm, however on Outgoing Partner refunding the amount received in the manner as under:

29) Clause 8(a) contained “entire agreement” clause and stipulates thus:

a. This MOU shall be deemed to contain all of the terms and conditions agreed upon with respect to the subject matter hereof, it being understood that there are no outside representations or oral agreements.

30) Petitioner contends that he has not received any consideration for having retired from the firm and has accordingly filed the present Petitions for constitution of the Arbitral Tribunal and for seeking interim measures for preserving area admeasuring 5000 sq.ft. on 2nd floor of the building.

31) The contesting Respondents have however questioned the very existence of arbitration agreement between the parties for adjudication of disputes arising out of the MOU, which admittedly does not contain arbitration clause. It is contended by the contesting Respondents that the prayers in Section 9 Petition seek enforcement of the MOU and no relief is claim under the Retirement Deed.

32) No doubt, the prayers sought in Section 9 Petition essentially relate to performance of contractual obligations under the MOU, which does not contain arbitration clause. However, the Deed of Retirement contains arbitration clause and therefore it is necessary to examine whether absence of arbitration clause in the MOU would come in the way of Petitioners seeking adjudication of disputes relating to non-payment of consideration while exiting the Partnership Firm through the mechanism of arbitration.

33) All the four documents of Deed of Retirement, Deed of Cancellation, Allotment Letter and MOU are executed simultaneously on the same day between the same parties. The MOU and Allotment Letter are essentially separate documents executed to complete a composite transaction of exit from the firm upon receipt of consideration. Ordinarily, the consideration for making exit from the Firm could have been incorporated in the Deed of Retirement itself. However, parties decided to execute multiple documents to complete the transaction of retirement of the Petitioner from the firm. It appears that there have been many entries and exits from the firm in the past. This could be the

reason why the continuing partners possibly desired to keep the commercials of exit outside the Deed of Retirement. This is the reason why, the Deed of Retirement records only the transaction of exit from the firm and a separate MoU is executed to record the financial transaction for such exit. In my view therefore, it can safely be inferred that all the four documents are executed to complete the composite transaction of retirement from the firm on receipt of consideration. Otherwise, the MOU, on its own, has no legs to stand. MOU clearly refers to the Retirement Deed and has been executed to give shape to the manner in which the Petitioner was to retire from the Firm.

34) The factum of MoU having direct connection with the Deed of Retirement is further clear from the fact that clause 7 of the same provides for the consequence of reinstatement of the outgoing partners. Thus, the MoU has a direct co-relation both with the Deed of Admission & Partnership and also with the Retirement cum Partnership Deed. The MoU thus cannot be treated as a document effecting a standalone transaction. It has no existence without the Deed of Admission & Partnership dated 11 December 2015 and Retirement cum Partnership Deed dated 16 October 2017.

35) It is not uncommon to execute multiple documents to give effect to a single transaction. A classic example is that of Agreement for Sale and Deed of Sale/Conveyance. In such cases, additional documents are executed to give effect to the transaction sought to be executed under the principal/mother document. In *Ameet Lalchand Shah* (supra), a sale and purchase agreement dated 5 March 2012 was executed for

purchase of products which were to be leased to another company. The said sale and purchase agreement did not contain any arbitration clause. A separate Equipment Lease Agreement dated 14 March 2012 was executed between the purchaser of products and the lessee, under which the lessee agreed to pay rent in respect of the leased products to the purchaser. The lessees defaulted in payment of rent. The purchaser filed a suit in this Court seeking a declaration that the Sale and Purchase Agreement as well as Equipment Lease Agreement were vitiated by fraud and that the same were void. The seller of the equipment, who was defendant in the suit, filed application under Section 8 of the Arbitration Act for reference of disputes to arbitration contending that the Sale and Purchase Agreement was the main agreement and that the other agreements were interconnected. The learned Single Judge of Delhi High Court dismissed Section 8 application holding that the Equipment Lease Agreement executed between purchaser-Rishabh Enterprises and lessee-Dante Energy could not be treated as mother/principal agreement. The Division Bench dismissed the Appeal holding that the main/principal agreement was Sale and Purchase Agreement, which did not contain arbitration clause. The Apex Court however held that though there were different agreements involving several parties, it was in respect of single commercial project. Relying upon judgment in **Chloro Controls India Pvt. Ltd. vs. Severn Trent Water Purification Inc. and Ors.**⁹, the Apex Court held in paras-22, 23 and 24 as under :

22. In *Chloro Controls*, this Court was dealing with the scope and interpretation of Section 45 of the Act, Part II of the Act and in that context, discussed the scope of relevant principles on the basis of which a non-

⁹ (2013) 1 SCC 641

signatory party also could be bound by the arbitration agreement. Under Section 45 of the Act, an applicant seeking reference of disputes to arbitration can either be a party to the arbitration agreement or any person claiming through or under such party. Section 45 uses the expression “... *at the request of one of the parties or any person claiming through or under him...*” includes non-signatory parties who can be referred to arbitration provided they satisfy the requirements of Sections 44 and 45 read with Schedule I of the Act.

23. In para 73 of *Chloro Controls*, this Court held as under: (SCC p. 683)

“73. A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject-matter and the agreement between the parties being a composite transaction. ***The transaction should be of a composite nature where performance of the mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute.*** Besides all this, the court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed.”

24. In a case like the present one, **though there are different agreements involving several parties, as discussed above, it is a single commercial project**, namely, operating a 2 MWp Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, Uttar Pradesh. Commissioning of the Solar Plant, which is the commercial understanding between the parties and it has been effected through several agreements. The agreement — Equipment Lease Agreement (14-3-2012) for commissioning of the Solar Plant is the principal/main agreement. The two agreements of Rishabh with Juwi India: (i) Equipment and Material Supply Contract (1-2-2012); and (ii) Engineering, Installation and Commissioning Contract (1-2-2012) and the Rishabh's Sale and Purchase Agreement with Astonfield (5-3-2012) are ancillary agreements which led to the main purpose of commissioning the Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, Uttar Pradesh by Dante Energy (lessee). Even though, the Sale and Purchase Agreement (5-3-2012) between Rishabh and Astonfield does not contain arbitration clause, it is integrally connected with the commissioning of the Solar Plant at Dongri, Raksa, District Jhansi, U.P. by Dante Energy. Juwi India, even though, not a party to the suit and even though, Astonfield and Appellant 1 Ameet Lalchand Shah are not signatories to the main agreement viz. Equipment Lease Agreement (14-3-2012), it is a commercial transaction integrally connected with commissioning of Photovoltaic Solar Plant at Dongri, Raksa, District Jhansi, U.P. Be it noted, as per Clause (v) of Article 4, parties have agreed that the entire risk, cost of the delivery and installation shall be at the cost of the Rishabh (lessor). Here again, we may recapitulate that engineering and installation is to be done by Juwi

India. What is evident from the facts and intention of the parties is to facilitate procurement of equipments, sale and purchase of equipments, installation and leasing out the equipments to Dante Energy. The dispute between the parties to various agreements could be resolved only by referring all the four agreements and the parties thereon to arbitration.

(emphasis added)

36) The judgment in *Ameet Lalchand Shah* is sought to be distinguished by Mr. Kothari contending that the judgment is rendered by treating the Sale Purchase Agreement as a main/principal agreement, whereas in the present case, Retirement Deed or Partnership Deed are not the principal agreements and for the purpose of adjudication of claim of the Petitioner, the principal agreement is the MOU. I am unable to agree. The principal/main agreement in the present case is the Deed of Retirement. The MOU is executed only for the purpose of giving shape to the Deed of Retirement. The consideration payable under the MOU flows out of the Deed of Retirement. The intention of the parties is to effect exit of the partners from the partnership firm upon payment of consideration and this intention is fulfilled by execution of Deed of Retirement and MoU. The amount of Rs.17.60 crores is agreed to be payable as consideration to exit from the partnership firm. The exit is effected through the Deed of Retirement. Therefore, the Deed of Retirement is the principal document executed between the parties and it cannot be contended that the MOU is the principal/main document. The ratio of the judgment in *Ameet Lalchand Shah*, in my view, squarely applies to the present case where parties have executed multiple documents to give effect to single composite transaction. MOU does not by itself effect any transaction between the parties. The transaction is effected through the Deed of Retirement, to which the shape is given by MOU. There is no dispute to the position that the Letter of Allotment is

issued in pursuance of the MOU. Thus, all the three documents of Deed of Retirement, MOU and Letter of Allotment form part of one composite transaction between the parties.

37) In the Three Judge Bench decision in **Cox and Kings Ltd. vs. SAP India Pvt. Ltd. and Anr.**¹⁰, while making a reference to the larger bench, the ratio of the judgment in ***Ameet Lalchand Shah*** has been restated in para-35 of the judgment. The subsequent judgment of the Supreme COurt in **ONGC Ltd. v. Discovery Enterprises (P) Ltd**¹¹, also reiterates the view taken in ***Ameet Lalchand Shah***. The Constitution Bench in **Cox and Kings Ltd. vs. SAP India Pvt. Ltd. and Anr.**¹² also approves the view taken in ***Ameet Lalchand Shah***. It is held in paras-36 and 219 of the Constitution Bench judgment in ***Cox and Kings Ltd as*** under:

36. In ***Ameet Lalchand Shah v. Rishabh Enterprises***, a two-Judge Bench of this Court was dealing with an arbitral dispute arising out of four interconnected agreements executed towards a single commercial project. The issue was whether the four agreements were interconnected to refer all the parties to arbitration. In that case, all the parties were not signatories to the main agreement containing the arbitration clause. This Court relied on Chloro Controls to hold that a non-signatory, which is a party to an interconnected agreement, would be bound by the arbitration clause in the principal agreement. It observed that in view of the composite nature of the transaction, the disputes between the parties to various agreements could be resolved effectively by referring all of them to arbitration.

¹⁰ (2022) 8 SCC 1

¹¹ (2022) 8 SCC 42

¹² (2024) 4 SCC 1

219. The subsequent decision in ***Ameet Lalchand Shah v. Rishabh Enterprises*** is yet another instance where this Court has allowed a non-signatory to be party to an arbitration agreement, in connected contracts, on the ground of business efficacy, noting that all agreements were executed for a single commercial project. This approach was noted in the subsequent decision of ***Discovery Enterprises [ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42]***, where the learned Chief Justice has noted : (SCC p. 69, para 28)

*“28. ... In ***Ameet Lalchand***, the Court did not explicitly invoke the Group of Companies doctrine to bind a non-signatory, rather it relied on Chloro Controls to hold that a non-signatory would be bound by the arbitration clause in the mother agreement, since it is a party to an inter-connected agreement, executed to achieve a common commercial goal.”*

38) Though the Constitution Bench in ***Cox and Kings Ltd.*** (supra) has essentially dealt with application of “Group of Companies” doctrine for inferring arbitration agreement, it has also considered the facet of execution of multiple documents to effect a composite transaction. It is held in para-121 and 122 of the judgment as under:

121. In case of a composite transaction involving multiple agreements, it would be incumbent for the Courts and tribunals to assess whether the agreements are consequential or in the nature of a follow-up to the principal agreement. This Court in ***Canara Bank [MTNL v. Canara Bank, (2020) 12 SCC 767]*** observed that a composite transaction refers to a situation where the transaction is interlinked in nature or where the performance of the principal agreement may not be feasible without the aid, execution, and performance of the supplementary or ancillary agreements.

122. The general position of law is that parties will be referred to arbitration under the principal agreement if there is a situation where there are disputes and differences “in connection with” the main agreement and also disputes “connected with” the subject-matter of the principal agreement. [***Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651***] In ***Chloro Controls***, this Court clarified that the principle of “composite performance” would have to be gathered from the conjoint reading of the principal and supplementary agreements on the one hand, and the explicit intention of the parties and attendant circumstances on the other. The common participation in the commercial project by the signatory and non-signatory parties for the purposes of achieving a common purpose could be an indicator of the fact that all the parties intended the

non-signatory party to be bound by the arbitration agreement. Thus, the application of the Group of Companies doctrine in case of composite transactions ensures accountability of all parties who have materially participated in the negotiation and performance of the transaction and by doing so have evinced a mutual intent to be bound by the agreement to arbitrate.

(emphasis added)

39) In my view, the ratio of judgments in ***Ameet Lalchand Shah*** and ***Cox and Kings Ltd.*** (supra) would squarely apply in present case where multiple documents are executed by parties to give effect to a composite transaction. The MOU is inseparably intertwined with Retirement Deed and does not have its own legs to stand on. The MOU therefore cannot be separated from the Deed of Retirement, notwithstanding the 'entire agreement' clause. The MOU, on its own, does not seek to execute any separate transaction and only provides for a methodology for payment of consideration under the MOU. In my view therefore, reference to arbitration can be made by invoking arbitration clause in the Deed of Retirement, even though the Petitioner seeks to enforce the contractual obligations flowing out of the MOU.

40) Having held that there is an agreement to arbitrate even qua the disputes flowing out of the MOU, it is necessary to deal with further objection sought to be raised on behalf of the contesting Respondents. It is contended that the MOU itself provides for the consequence of default in clause 7(a). It is contended that upon commission of default of Respondents/continuing partners, the Petitioners have discretion to terminate the MOU and accordingly, Admission cum Retirement Deed would automatically stand terminated and cancelled and outgoing partners would be reinstated as partners. It is therefore contended that if

any default under MOU is committed, only agreed consequence is for reinstatement of the Petitioner as partner and the whole arrangement of payment of any consideration comes to an end. It is contended that 5000 sq.ft. premises were provided as security only for due observance of MOU. However, if MOU is broken, Petitioner cannot seek performance thereof and ought to have treated the same as terminated and insisted for his reinstatement in the firm.

41) The composite nature of transaction effected by Retirement Deed, Cancellation Deed and the MOU read with Allotment Letter, all executed on 16 October 2017, is such that the value of the share of the outgoing partners was determined at Rs. 17.60 crores. The partnership firm has undertaken development of commercial building at Malad, Mumbai and the shares of all the seven partners as per the Deed dated 11 February 2015 were as under:

Sr. No.	Name of Partner	Share (%)
i.	Rameshkumar Ravjibhai Patel	26
ii.	Savitaben Ravjibhai Patel	09
iii.	Parun Rameshkumar Patel	10
iv.	Bharat Lakshmi Shah	05
v.	Viral Rameshkumar Patel	05
vi.	Rajendrakumar Hastimal Singhvi	05
vii.	Mahindra Mangilalji Jain	20
viii.	Ankit Bhogilal Kubadia	20
	Total	100

42) Petitioner claims to have invested total Rs. 2,46,99,000/- in the project. As a result of four documents executed on 16 October 2017, only 3 partners continued to remain in the Firm with their shares as under:

Sr. No.	Name of Partner	Share (%)
i.	Rameshkumar Ravjibhai Patel	70
ii.	Viral Rameshkumar Patel	20
iii.	Bharat Lakhamshi Shah	10
	Total	100

43) Thus, Petitioner, Respondent Nos. 3, 4, 7 and 8 have retired from the partnership Firm. The continuing partners have agreed to pay to the retiring partners/outgoing partners an amount of 17,60,00,000/- as consideration for sale of their interest in the Firm. MOU records the mode of payment of agreed consideration of 17.6 crores through various cheques indicated in para 2 of the MOU. It appears that on 17 October 2017, cheques of Rs. 10 lakhs and 3.55 crores were drawn in name of Petitioner whereas cheques of Rs. 3.55 crores and 2 crores were drawn in name of Rajendra H. Sanghvi. Thereafter some post-dated cheques were issued to Petitioner and other retiring partners. Petitioner was issued post-dated cheque of Rs. 2.43 crores and Rs 3.50 crores. As per clause 8 (e) of the MOU, according to the Petitioner, the Retirement Deed, Deed of Cancellation and MOU dated 16 October 2017 together with Allotment Letter and 7 cheques referred to in clauses 2(a) to 2(g) of the MOU were kept in the escrow with advocate. According to Petitioner, he has received

nothing in terms of MOU dated 16 October 2017. By another MOU executed in November 2019, Mr Rajendra H. Sanghvi has apparently released all his rights, title and shares in the three documents of 16 October 2017 in favour of the Petitioner. According to the Petitioner, the outgoing partner Mr. Rajendra H. Sanghvi has released his rights under the 3 documents executed on 16 October 2017 in favour of Petitioner vide MOU dated 20 February 2020. Petitioner claims that he alone has right to recover 17.6 crores from the continuing partners.

44) There is no dispute to the position that continuing partners have failed to act in accordance with contractual obligations to pay agreed consideration of 17.6 crores to retiring partner/Petitioner. According to the continuing partners, such default would only entail reinstatement of the pet as partner in the firm.

45) In my view, whether Petitioner can claim recovery of entire consideration of 17.6 crores with interest or whether he is entitled only to his reinstatement as a partner is something which the Arbitral Tribunal would decide while adjudicating the rival claims of the parties. As of now, this court is considering whether interim measures need to be made to preserve subject matter of arbitration. It cannot be contended, by any stretch of imagination, that the premises admeasuring 5000 sq.ft. in the constructed building do not constitute the subject matter of arbitration. Those premises are part and parcel of MOU and act as security for due observance of terms and conditions of the MOU. In my view therefore, till adjudication of claims of Petitioner in arbitral proceedings, it would be

necessary to preserve the premises admeasuring 5000 sq.ft. which form the subject matter of arbitration.

46) By order dated 10 September 2025, this Court has directed Court Receiver to take physical possession of Unit Nos. 1305, 1009, 1110, 1101 and 1001. It appears that the Court Receiver had appointed M/s. Amol Bora and Company to carry out measurement of said five units. As per the report, the area of the said five units is as under:

No.	Office No.	Floor No.	Carpet Area in Sq.ft.
1	1305	Thirteenth (13)	1261
2	1009	Tenth (10)	598
3	1110	Eleventh (11)	655
4	1101	Eleventh (11)	1215
5	1001	Tenth (10)	1191
TOTAL AREA			4920

47) Petitioner complains that the five units in respect of which Court Receiver is appointed are spread across three different floors (10,11 and 13) whereas MOU contemplates allotment of contiguous premises admeasuring 5000 sq.ft. on the second floor. Mr. Shah has submitted a list of premises apparently available on ground, 1st, 2nd, 3rd, 4th and 5th floors. In my view, since Court Receiver is already appointed in respect of above-mentioned five units, the said arrangement needs to be continued during pendency of the arbitral proceedings rather than undertaking exercise of finding out availability of other encumbrance-free units, measurement of

their areas etc. Many times, smaller units are saleable faster and attract better prices than contiguous large sized premises.

48) Mr. Kothari has submitted that Petitioner is approbating and reprobating and has relied upon the judgment of Apex Court in ***Union of India and Ors. vs. N. Murugesan and Ors.*** (supra). However in my view, the doctrine of election would not apply to the present case. Petitioner does not really have any choice in the facts and circumstances of the present case and no options are available before him for making the election. Whether MOU makes him entitled to claim 17.6 crores or whether he can only get reinstatement as partner is something which the Arbitral Tribunal would decide while making the final award. As of now, Petitioner need not elect as to whether he wants to press the claim for recovery of Rs.17.6 crores or whether he wants reinstatement as partner. As of now, this Court is only considering the issue of preservation of subject matter of arbitration. Whether petitioner has treated the MOU as terminated and whether he is simultaneously seeking performance of the same, it is something which needs to be decided during final adjudication of the claims. All that needs to be noted at this juncture is the fact that the continuing partners issued cheques for payment of consideration of Rs.17.60 crores and premises admeasuring 5000 sq.ft. were reserved as security for performance of obligation of payment of Rs.17.60 crores. Premises admeasuring 5000 sq.ft. broadly represent the consideration amount of 17.6 crores. In these circumstances, interim measures of preservation of premises offered as security cannot be denied only because MOU provides for consequence of reinstatement as a partner in the event of failure to observe obligations under the MOU. Therefore, the

argument of approbation and reprobation raised on behalf of continuing partners is clearly misplaced.

49) Reliance by Mr. Kothari on judgment of Division Bench of Karnataka High Court in **B. Prashanth** (supra) is inapposite. In case before the Karnataka High Court, arbitration clause in partnership deed was invoked. Under the partnership deed, business of retail fuel outlet of Bharat Petroleum Corporation Limited was commenced on land owned by the defendants. Plaintiff was to recover 99% of the profit during first five years for initial investment made by him. Later, an agreement was executed under which the defendant agreed to pay 3.74 crores on receipt of which plaintiff was to exit the partnership. In the suit, defendant filed application under Section 8 of Arbitration Act relying on arbitration clause in the deed of partnership. The suit was filed for recovery of amount as per the agreement dated 10 August 2022 and not for enforcement of any contractual terms under the partnership deed. It is in the light of these facts the Karnataka High Court held that execution of agreement dated 10 August 2022 brought the jural relationship between the parties to partnership deed to an end and that all terms of partnership deed stood rescinded. This is the reason why rejection of application under Section 8 filed by defendant was upheld by the Supreme Court and the SLP was dismissed. In para 6.3 of the judgment of **B. Prashanth** (supra), Karnataka High Court held as under:

6.3 The jural relationship which existed previously between the parties as the partners, came to an end with execution of a fresh contract. With the jural relationship having been put to an end by new contract, the partnership agreement perished. All the terms and conditions of the partnership deed stood rescinded. The said contract of partnership dated 22nd June 2020, having

been replaced by new agreement dated 10th August 2022, did not survive on facts and in law.

50) The facts and circumstances of the case in ***B. Prashanth*** are clearly distinguishable and have no application to present case. In the present case, MOU was executed for the purpose of deciding modality of payment of consideration payable under the Deed of Retirement. Therefore, the MOU did not bring to an end the contractual obligations under the Deed of Retirement. On the contrary, MOU contains a covenant for restitution of partnership of retiring partners in the event of failure to pay in accordance with the MOU. Thus, the jural relationship between the partners and their connection to the business of the firm was not brought to end by the MOU. It merely provided for the modalities by which consideration was to be paid arising out of the Retirement Deed.

51) In my view therefore there clearly exists agreement for arbitration between the parties. It would therefore be just and proper to constitute Arbitral Tribunal comprising of a sole arbitrator. So far as interim measures are concerned, it would be appropriate to continue the arrangement of taking over physical possession of the five units by the Court Receiver and retaining the same during pendency of arbitral proceedings and till making of final award. It would also be apposite to restrain continuing partners from creating any third-party rights in respect of five units during pendency of arbitral proceedings.

52) So far as Respondent No.8 is concerned, whether he is a necessary party to arbitral proceedings or not can be decided by the Arbitral Tribunal. It is for the Petitioner to decide whether to implead

Respondent No.8 in arbitral proceedings. In the event Respondent No.8 is impleaded in arbitral proceedings, it would be for Respondent No.8 to apply for his deletion before the Arbitral Tribunal.

53) Commercial Arbitration Application (L) No. 12427/2025 is allowed and Arbitral Tribunal is constituted as under:

(A) Smt. Justice Sadhana Jadhav, former Judge of this Court is appointed as Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of the Deed of Retirement referred to above. The contact details of the Arbitrator are as under :

Office Address :- C/o. Adv. Vijay Hiremath, 108, Seksaria Chamber, Nagindas Master Road, Opp. Commerce House, Kala Ghoda, Fort, Mumbai – 400001

Email ID :- sjadhav0660@gmail.com

(B) A copy of this order be communicated to the learned sole Arbitrator by the Advocate for the Petitioner/Applicant within a period of one week from the date of uploading of this order. The Petitioner/Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

(C) The learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read

with Section 12(1) of the Act to the parties within a period of 2 weeks from receipt of a copy of this order.

(D) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by her, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

(E) The fees of the sole Arbitrator shall be as prescribed under 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.

54) There shall be interim measures in the following terms:

- (i) Pending the arbitral proceedings and till making of final award, by way of interim measures, the Court Receiver shall continue to possess office/unit nos. 1305, 1009, 1110, 1101 and 1001 at Ventura Commercial Hub, near Sanjeevani Hospital, Radha Nagar, Kedarmal Road, Off Rani Sati Marg, Malad (E), Mumbai – 400097.
- (ii) Pending the arbitral proceedings and till making of final award, Respondents are restrained from alienating,

transferring, selling, creating third party rights or parting with possession of unit Nos. 1001, 1009, 1101, 1110 and 1305.

55) All rights and contentions of parties on merits are kept open to be agitated before the Arbitral Tribunal.

56) With above directions, both Commercial Arbitration Application (L) No. 12427 of 2025 and Commercial Arbitration Petition (L) No. 8173 of 2025 are disposed of. Nothing survives in Interim Application (L) No. 30822 of 2025, which is also disposed of.

[SANDEEP V. MARNE, J.]

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signed by
NEETA
SHAILESH
SAWANT
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