

MODEL SPECIMENS*

Arbitration Agreement (General)

An agreement made on the day of20..... between(name of the company) (hereinafter called the Company which expression shall mean and include its successors and assigns) of the one part, and (name of the purchaser) (hereinafter called 'the purchasers' which expression shall mean and include its successors and assigns) of the other part.

Whereas under a contract dated the purchasers placed orders with the said Company for the supply of certain machinery, plant and equipments for the purpose of a mill to be erected by the said purchasers and whereas the machinery which was dispatched by the Company was received by purchasers before the date on which the same should have been supplied under the aforesaid contract (and whereas the balance of the machinery has not been delivered to the said purchasers) and whereas after taking delivery of the machinery the purchasers have made claims in respect of the non-delivery of certain machines and short supplies in the machinery actually received and defects in workmanship and quality and deviations from the specification agreed upon between the parties and whereas certain drafts drawn by the Company on the purchasers particulars whereof are as hereunder specified (or shall be handed over to the arbitrators) have remained unpaid on the professed ground of non-delivery, short delivery and defective workmanship and deviation from the specification which allegations of the purchasers are denied by the Company and the Company claims payment of the said drafts and compensation for delay in payment thereof from the purchasers.

And whereas the purchasers claim compensation from the Company in respect of the following:—

- (a) Claim for the alleged short supplies in the machinery
- (b) Claim for alleged bad design, quality and workmanship or unsatisfactory performance of the machinery supplied.

The said Company and the purchasers hereby agree as follows:—

1. That the aforesaid claims shall be referred to the arbitration of and and that the arbitrators shall appoint an Umpire previous to proceeding with the reference and that the award of the two arbitrators or of the Umpire as the case may be shall be final and binding upon both the parties.

2. That the proceedings hereunder shall in all respects be governed by the provisions of the Arbitration Act, X of 1940.

3. That the arbitrators shall make their award within three months from the date of entering on the said reference.

4. That if the arbitrators do not agree and the matter has to be referred to the Umpire, the Umpire shall be at liberty to proceed from the point where the two arbitrators disagreed and shall not be bound to proceed *de novo* with the said arbitration but shall be entitled to rely upon the notes of evidence and the documents which may have been put in before the arbitrators. The Umpire shall

* These specimens are for guidance. Contents may vary according to the terms and conditions of the agreement and prevailing circumstances.

make his award within two months after the matters have been referred to him by the arbitrators as aforesaid.

5. That the costs of both the parties of and incidental to the arbitrations and award shall be within the discretion of the two arbitrators or the Umpire as the case may be who may direct to and by whom and to what extent and in what manner the same shall be paid.

6. That the arbitrators or the Umpire as the case may be shall if he or they think necessary and at his or their discretion, visit the place or places where any of the said machinery, plant or equipments have been installed or are lying in order to ascertain the condition or working thereof or for any other purpose he or they may think fit.

7. That the arbitrators or the Umpire may appoint any Engineer or Technical Expert to examine and ascertain the condition or working of any of the said mentioned.

Now this agreement of reference witnesses as under:

1. That the arbitrator shall be entitled to ascertain the extent of value of the joint family properties and shall determine the manner in which the business of the joint family shall be carried on hereafter and wound up and provide for the disposal of the goodwill of the business as he shall deem fit.

2. That the arbitrator shall have full power to divide and allot by lot or otherwise the joint family properties amongst the parties aforementioned after determining the share of each such party and the extent and nature of the rights which belong to Mrs. aforementioned. The arbitrator shall also take into consideration the rights of the unmarried daughters of the parties aforementioned and shall make the provisions for their education, binding up and marriage as the circumstances may required.

The arbitrator shall be entitled to award money compensation from one party to the other party to equalise the shares thereof. The arbitrators shall also be entitled to cause any property or properties to be sold and to distribute the assets after payment of the deeds of the family in such a manner as he shall deem fit. The arbitrator shall be entitled to take such evidence as he may deem necessary and to direct title delivery of the deeds or other document from one party or to the other in connection with the share allotted to such other party. He shall also be entitled to cause any of the joint family property to be partitioned or divided by metes or bounds and to cause a structure to be built or demolished as he may think fit or the separate enjoyment of the share in immovable property allotted to each or any party.

4. Except for fraud or collusion, the award of the arbitrator shall not be set aside for any other judicial misconduct or in the proceedings.

In witness whereof the aforementioned parties have signed this deed in token of acceptance thereof.

Witness.....

A

B

C

Place.....

D

Date.....

E

Agreement for Reference Out of Court to One Arbitrator

An agreement made on the day of20..... between 'A', 'B' of etc. of the one part and 'C', 'D' of the other part.

Whereas by a mortgage-deed, dated made between the parties, the first party hypothecated its property at to secure payment of Rs. to the second party.

And whereas disputes and differences have arisen and are now subsisting between the parties hereto touching the construction of and the rights and liabilities of the parties under the said deed in particular: (a) How much amount is due by 'C', 'D' to the said 'A', 'B' on account of principal and interest on the basis of the deed? Whether the property mortgaged and the persons of 'C', 'D' are also liable or not, (c) whether 'C', 'D' are entitled to any instalments.

1. Now it is hereby agreed that the said disputes and differences shall be referred and the same are hereby referred to the award and determination of 'K' of etc.

2. The said arbitrator shall make his award in writing under his hand within three months from the date hereof and within such extended time not exceeding months and he should enlarge the time for making the award.

3. The Arbitrator may proceed *ex parte* in case either party fails to appear the reasonable notice.

4. This agreement shall remain effective and enforceable against the legal representative of either party in case of his death.

5. The provisions of the Indian Arbitration Act, 1940, shall apply to his reference.

6. The costs of this reference shall be in the discretion of the Arbitrator.

In witness whereof the parties hereto have affixed their signatures in the presence of witnesses.

Witnesses:

Signatures of parties

Place.....

Date.....

Reference to one Arbitrator

This agreement made on the..... day of20..... between A and B Whereas the said A and the said B have been carrying on business in partnership as building contractors in New Delhi and elsewhere; And whereas several disputes and differences have arisen between them on various matters connected with the said partnership; And whereas the said A and the said B have agreed to refer all such disputes and differences to the sole arbitration of C and to accept his award as final and binding on each of them;

This agreement witnesseth as follows:—

1. That the said A and the said B hereby nominate and appoint C (description) as sole arbitrator (a) for the purpose of deciding the following disputes and differences between them:—

(Detail and description of the disputes and differences);

Or, (b) for the purpose of deciding all the disputes and differences between them relating to the said business a list whereof shall be furnished in writing by the said A and said B respectively to the said arbitrator on or before the day of..... 20.....

2. That the arbitrator shall thereupon fix and notify in writing to the parties hereto the time, the day, and the place of hearing the said A and B in support of their respective cases, and for hearing and evidence, oral or documentary, that may then and there be produced by them respectively.

3. That it shall be lawful for the arbitrator at his discretion to adjourn the proceedings from time to time or to proceed in the absence of either the said A or the said B or of their respective evidence, if default be made by them or either of them in appearing before him or in producing their or his evidence after reasonable notice, of which the arbitrator shall be the sole judge, has been given to them by the arbitrator.

4. That the award of the arbitrator shall be made by him in writing on or before the day of20....., or on such adjourned date or dates, as he, the said arbitrator shall from time to time fix, but always with the consent in writing of both the said A and the said B.

5. That it shall also be within the authority of the arbitrator to decide by his award whether certain matters contained in the list submitted by the said A and said B respectively of the disputes and differences on which arbitration is sought, relate or do not relate to the said partnership business.

6. That the award made hereunder in writing by the said arbitrator shall be final and binding on the said A and on the said B and their respective heirs, legal representatives, successors and assigns.

In witness whereof:—

Signature

Place.....

A

Date.....

B

Note.—Paragraph 5 to be omitted if the first alternative as to the list of disputes and differences in paragraph 1 is adopted.

Agreement for Reference to Two Arbitrators

This agreement is made on theday of20..... between (name of the first party) of etc. hereinafter called party of the first part and (name of the second party) of etc. hereinafter called party of the second part.

Whereas the aforesaid parties have been trading as partners under the firm, name and style of at and under an agreement of partnership dated..... and whereas the terms of that agreement provide *inter alia* (a) that each partner shall contribute to the capital of the partnership Rs. (b) that the partnership shall carry on business of at and (c) that each partner shall be entitled to profit and loss in equal shares, and whereas party of the first part had contributed Rs. to the capital and the party of the second part Rs. and whereas the partnership has been carried on for the last years and whereas disputes and difference have arisen between the partners and it is impossible to carry on the business in future, and whereas the parties have agreed to refer their dispute to the arbitration of two arbitrators, M/s..... and

Now it is hereby agreed as follows:—

1. The arbitrators shall make their Award within three months after entering in reference or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators by any

writing signed by them may from time to time enlarge the time in making the Award.

2. The arbitrators shall have the power to determine or decide the following matters:

- (a) After going through the account of the partnership the amount of the profit and loss to be determined by the Arbitrators.
- (b) Which party is liable to pay and the amount for which it is liable to the other party.
- (c) The arbitrators, shall also fix the date on which the partnership shall be deemed to be dissolved.

3. The aforesaid two arbitrators shall have the power to appoint as Umpire at any time during the period in which they have to make the Award.

4. If the arbitrators agree among themselves then their unanimous decision Award shall be binding on the parties. If the Arbitrators do not agree then the Umpire shall make his award within one month, after the original or extended time appointed for making the Award of the Arbitrators has expired, or on or before any later day to which the Umpire by any writing signed by him, may, from time to time, enlarge the time for making the Award and in that case the decision of the Umpire shall be binding on the parties.

5. The Arbitrators may proceed *ex parte* in case either party fails to appear after reasonable notice.

6. This agreement shall remain effective and enforceable against the legal representatives of either party in case of death.

7. The Arbitrators may appoint an Accountant for examining the account of the party if they think necessary and the remuneration of the Accountant as determined by the arbitrators shall be the costs in the reference to be paid by the parties as the arbitrators may direct in their Award.

8. In case the arbitrators award that any sum is due from one party to the other, then the party to whom the said sum is awarded may apply to the court for having a decree passed in terms of the Award and may realise the amount in execution of the decree from the other party.

Signature

Place.....

Date.....

Order for Appointment of New Arbitrator

(Title of Suit)

Whereas by an order, dated the day of 20 (state order of reference and death, refusal, etc. of arbitrator), it is by consent ordered that (name of the new arbitrator) be appointed in the place of (name of the deceased arbitrator) (deceased, or as the case may be) to act as arbitrator, with (name of the surviving arbitrator), the surviving arbitrator under the said order; and it is ordered that the award of the said arbitrators be made on or before the day of 20

Given under my hand and the seal of the Court, this day of 20.....

Judge