



**DECCAN EDUCATION SOCIETY'S  
SHRI NAVALMAL FIRODIA LAW COLLEGE, PUNE  
MOOT COURT SOCIETY ORGANISES**

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**LOKMANYA TILAK NATIONAL APPELLATE  
MOOT COURT COMPETITION.**

**(15<sup>th</sup> EDITION)**

**24<sup>th</sup> and 25<sup>th</sup> March, 2023.**

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**MOOT PROPOSITION**

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## **FACT SHEET**

1. Phoenix Hospitalities, a partnership firm with its registered office in Pune, Maharashtra, India, was established in accordance with the Indian Partnership Act, 1932 in 2012 and has been investing in hospitality and related services and businesses all over Maharashtra. Three partners—Mr. Anand, Mr. Bhagat, and Mr. Chaudhari—constitute the aforementioned partnership firm. A “Deed of Partnership” (*Annexure 1*) was executed by and between the partners of the partnership firm on 10/01/2012 at Pune and was duly registered with the Registrar of Firms, Pune on 10/01/2012.
2. The division of shareholding among each partner as stated in clause 9 of the Deed of Partnership is as follows- Mr. Chaudhari is a 40% shareholder in the partnership firm, whereas Mr. Anand and Mr. Bhagat both possess 30% apiece. According to clause 5 of the Deed of Partnership, Mr. Chaudhari is the Chief Finance Officer, Mr. Anand is the Chief Administrative Officer and Mr. Bhagat is the Chief Marketing Officer.
3. Since its inception, the said partnership firm has invested its capital in a number of hospitality and other related business projects as mentioned in clause 6 of the Deed of Partnership. In 2015, Mr. Chaudhari suggested investing in a new venture under the partnership firm and expanding their business horizons. He proposed establishing a hospital with grand super-speciality facilities in Dr. Sharma’s direction. Dr. Sharma, a friend of Mr. Chaudhari an MD (Doctor of Medicine) who is well-known and connected to several other multi-specialty medical institutions across the nation was on board with this proposal and was interested in executing a contract for the same with the partners of said partnership firm. In order to discuss the plan for the establishment of the hospital, Mr. Chaudhari arranged a meeting of all the partners of the partnership firm with Dr. Sharma on 21/10/2015. The confidence and tenacity of Mr. Chaudhari’s and Dr. Sharma’s proposal, persuaded Mr. Anand and Mr. Bhagat to invest their capital in the construction and establishment of the grand super-speciality hospital. A “Hospital Institution, Operation and Management Agreement” (*Annexure 2*) was executed between all the partners and Dr. Sharma on 15/02/2016 and registered on the same day. The agreement laid down the hospital’s institution, Board of Directors, investment and profit percentage and operations and management of the hospital.
4. The super speciality hospital would be located inside the boundaries of Pune City. In line with the percentage of investment specified by each partner in the agreement dated

15/02/2016, land was consequently purchased in the name of the hospital near Kharadi, Pune.

5. The proposed grand super-speciality hospital's construction began in November 2016 and was completed on December 25, 2018. The hospital was officially inaugurated on 01/01/2019 under the name and style "Phoenix Super Speciality Hospital," as registered in accordance with the provisions of the Companies Act, 2013. It acquired all the necessary permissions and licenses like IMC registration certificate under the Indian Medical Council Act, 2002, certificate from Municipal Corporation for hospital registration, pharmacy registration, vehicle registrations for ambulances, licensing of arms under the Arms Act, 1959, FSSAI license for operating a kitchen, etc. required for its smooth and efficient operations. As decided in the meeting dated 15/02/2016, the Boards of Directors consists of Dr. Sharma, Mr. Chaudhari as the Chief Administrative Officer, the Chief Marketing Officer and the Chief Finance Officer, Mr. Anand and Mr. Bhagat as additional directors.
6. The hospital was well received by the populace and rose to prominence as one of the best medical service providers in the area. The firm starts seeing a return on their investment as early as the fourth quarter of the same annual year. The partners were very happy to draw good returns from the newly constructed super- speciality hospital and trusted Mr. Chaudhari and Dr. Sharma with its operations and management.
7. In November 2019, the COVID-19 pandemic which first appeared in China, expanded quickly throughout the world, including India. India noticed a surge in the daily reports of cases from March 2020. This resulted in the requirement for special care for afflicted individuals and hospitals throughout India were overrun with patients. Due to this, Phoenix Super Speciality Hospital saw a surge in demand for medical assistance and facilities for COVID- 19 cases including other types of medical needs.
8. In the month of January 2022, Mr. Anand while glancing through the books of accounts of the partnership firm identified significant irregularities and errors approximately amounting to Rs. 3,00,00,000/- (Rupees Three Crores Only). He conveyed this to Mr. Bhagat. Mr. Bhagat cross verified the entries and confirmed the same to Mr. Anand. Mr. Anand and Mr. Bhagat tried questioning Mr. Chaudhari in respect of the errors in the entries in the books of accounts of the partnership firm. He initially gave evasive answers and tried to ignore them from time to time. Later on, Mr. Chaudhari tried evading confrontation by stating to both, Mr. Anand and Mr. Bhagat that he was unable

to provide proper financial reports as he was heavily burdened and occupied by the work of the super speciality hospital.

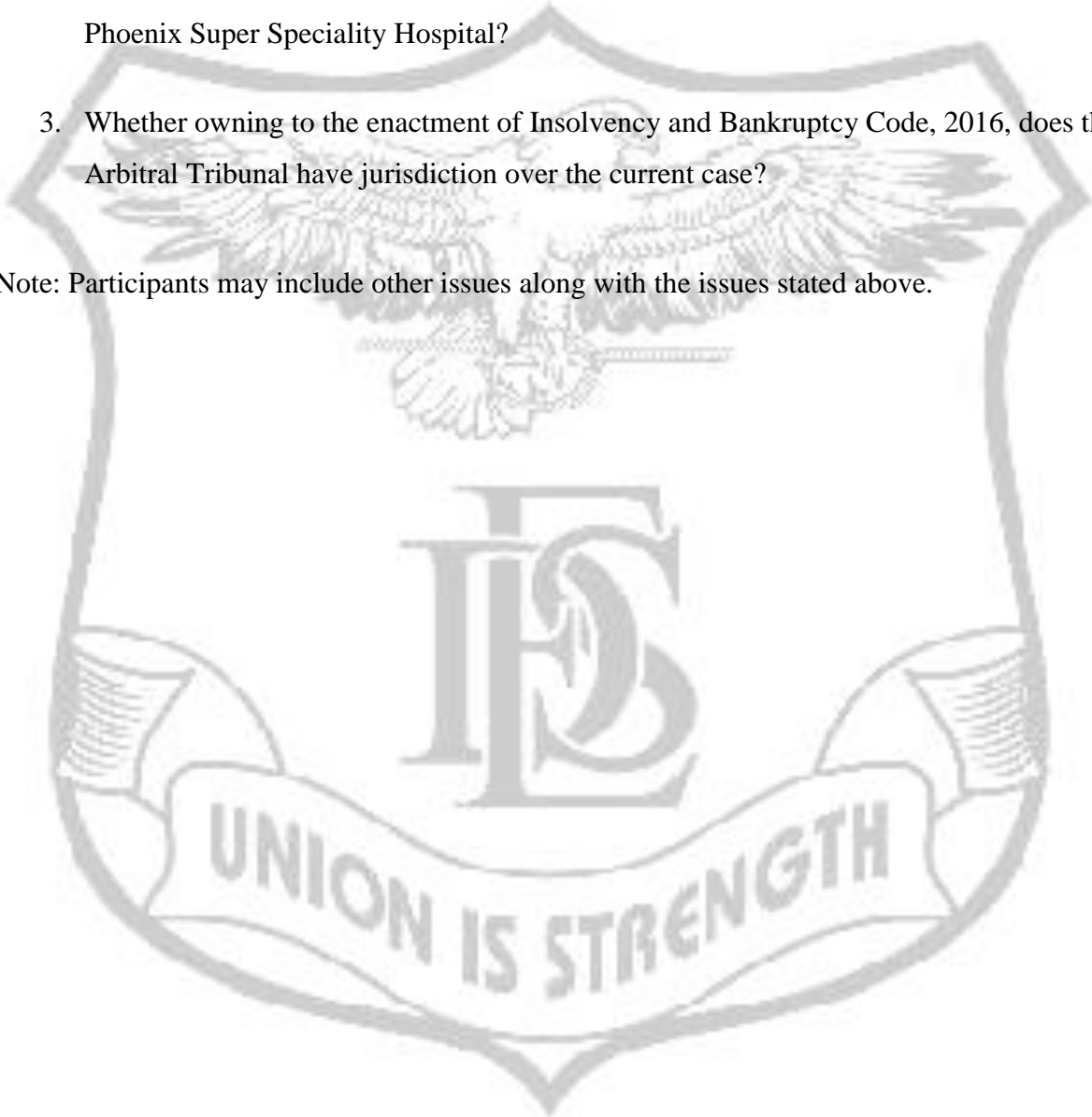
9. Owing to such statement made by Mr. Chaudhari regarding his busy schedule, Mr. Anand and Mr. Bhagat communicated about their concern to Dr. Sharma and requested him to peruse the book of accounts of the hospital. Upon auditing, Dr. Sharma too found certain errors in the books approximately amounting to Rs. 5,00,00,000/- (Rupees Five Crores Only).
10. Collectively, Mr. Anand and Mr. Bhagat and Dr. Sharma decided to confront Mr. Chaudhari. Mr. Chaudhari realized this and on various instances avoided their phone calls. Mr. Chaudhari even ignored the invitations for conducting a meeting sent via WhatsApp. (*Annexure 3.1*). By the end of January 2022, Mr. Chaudhari had stopped going to the offices as well. Aggrieved by this behaviour, Mr. Anand, Mr. Bhagat and Dr. Sharma wrote an email stating their concern. The email dated 02/02/2022 (*Annexure 3.2*) addressed to Mr. Chaudhari on his work as well as personal email address demanded an explanation for the witnessed and perused errors. The email also stated that on failure to reply to the said email within the prescribed time, Mr. Anand, Mr. Bhagat and Dr. Sharma will be obligated to take legal action against Mr. Chaudhari. Mr. Chaudhari failed to reply to the email.
11. The partners of the partnership firm and the hospital conducted an audit of the books of accounts and revealed that the errors began from April 2020 to November 2020. March 2020 and November 2020. On perusal, they were shocked to discover that in December 2020, Mr. Chaudhari had invested in a pharmaceutical company named “Sigma Pvt. Ltd.” for manufacturing vaccines. They also discovered that not only had Mr. Chaudhari invested money from the accounts of the partnership firm and the hospital, he had also personally invested Rs. 2,00,00,000/- (Rupees Two Crores Only) in the same pharmaceutical company. The pharmaceutical company was drawing huge profits due to the COVID 19 breakout which was being distributed amongst its four investors equally. However, in July 2021, during the human trial phase of a vaccine invented by the said pharmaceutical company, negligence led to the death of 70% of the under trial patients. Sigma Pvt. Ltd. lost its license in September 2021 and all the investors along with Mr. Chaudhari had lost their invested money. Though this incident was a huge news during that period, the partners were unaware of such investments made by Mr. Chaudhari.

12. Owing to this dispute, Mr. Anand and Mr. Bhagat and Dr. Sharma sent a legal notice dated 15/02/2022 (*Annexure 4*) to Mr. Chaudhari regarding either settlement of dispute within 15 days from the date of notice or they will be compelled to initialize the arbitral proceedings by invoking the arbitration clause (clause no. 29) mentioned in the Deed of Partnership and Hospital Institution, Operations and Management Agreement (clause no. 12).
13. On receiving the aforementioned legal notice on 17/02/2022, Mr. Chaudhari replied to the notice on 19/02/2022 (*Annexure 5*) stating the transactions as valid and legal along with stating his acceptance to initiate the arbitration proceedings. The notice reply reached Mr. Anand, Mr Bhagat and Dr. Sharma on 21/02/2022.
14. Owing to the notice and notice in reply, after various deliberations, the arbitral proceedings began on 25/02/2022 in accordance with the clauses of Dispute Resolution under the Deed of Partnership and Hospital Institution, Operation and Management Agreement. The Statement of Claim and Defence(*Annexure 6 and Annexure 7*) was submitted by the opposing parties before the sole arbitrator. During the arbitral proceedings, on submission of witnesses and evidences, it was discovered that Mr. Chaudhari had become insolvent in October 2021 after losing the invested capital in Sigma Pvt. Ltd. The proceedings went on for 9 months and arbitral tribunal passed an Arbitral Award (*Annexure 8*) in the favour of the Mr. Anand, Mr. Bhagat and Dr. Sharma on 31/11/2022. The award directed Mr. Chaudhari to repay Mr. Anand, Mr. Bhagat and Dr. Sharma the total disputed amount of Rs. 8,00,00,000/-(Rupees Eight Crores Only) along with 12% interest per annum to each claimant in a period of 12 months. The Arbitral Award also directed Mr. Chaudhari to step down from his position as Chief Finance Officer in the partnership firm and as a director in the super speciality hospital.
15. Mr. Chaudhari presented an application dated 01/12/2022 (*Annexure 9*) before the Hon'ble District Court of Pune pleading to set aside the arbitral award based on the certain grounds as stated in Section 34 of the Arbitration and Conciliation Act, 2019. After recording the Petition and Written Statement (*Annexure 10*), the Hon'ble District Court of Pune most humbly passed an order on 01/01/2023 (*Annexure 11*) against Mr. Chaudhari. Aggrieved by the impugned order of the Hon'ble Court, Mr. Chaudhari appeals before the Hon'ble High Court of Bombay

## **ISSUES**

1. Whether Mr. Chaudhari is liable to pay Rs. 3,00,00,000/- (Rupees Three Crore Only) to Phoenix Hospitalities?
2. Whether Mr. Chaudhari is liable to pay Rs. 5,00,00,000/- (Rupees Five Crore Only) to Phoenix Super Speciality Hospital?
3. Whether owing to the enactment of Insolvency and Bankruptcy Code, 2016, does the Arbitral Tribunal have jurisdiction over the current case?

Note: Participants may include other issues along with the issues stated above.



**DEED OF PARTNERSHIP**

This Deed of Partnership is made on this 10th day of January in the year 2012.

**BETWEEN**

**Mr. Anand,**

Age- 45 years

Residing at- Kumar Clove, Flat 111

Near Goodwill society, Aundh 411 007,

Pune, Maharashtra.

(Hereinafter referred to as "**THE PARTNER NO. 1**") (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his heirs, executors, administrators and assigns)

...of the **FIRST PART**

**AND**

**Mr. Bhagat,**

Age- 44 years,

Residing at- Sindh Society, House Number 09,

Aundh 411 007, Pune, Maharashtra.

(Hereinafter referred to as "**THE PARTNER NO. 2**") (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his heirs, executors, administrators and assigns)

...of the **SECOND PART**

**AND**

**Mr. Chaudhari,**

Age- 43 years,

Residing at Cosmos Regency, Flat Number 08,

Baner 411 045, Pune, Maharashtra

(Hereinafter referred to as "**THE PARTNER NO. 3**") (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his heirs, executors, administrators and assigns)

...of the **THIRD PART**

WHEREAS the parties hereto have formed a Partnership Firm on certain terms and conditions mutually agreed between and by them.

AND WHEREAS the parties also agreed to execute a Partnership Deed to reduce into writing the terms and conditions agreed upon by the parties hereto and to define the rights, relations and obligations of the parties inter-se.

AND WHEREAS the parties have duly registered with the Registrar of Firms, Pune on this same day i.e. 10/01/2012

**NOW THIS DEED OF PARTNERSHIP EXECUTED BY AND BETWEEN THE PARTIES WITNESSES AS UNDER:**

1. That the parties hereto have joined each other as Partner on this 10th day of January in year 2012 and as Partners have constituted a Partnership Firm.
2. That the Partnership business shall be carried on in the name and style of **“PHOENIX HOSPITALITIES”**.
3. That the principal place of business of the Partnership Firm shall be Business Avenue Complex, Model Colony, Pune -411016, Maharashtra. The Firm may with the mutual consent of the parties hereto may change the principal place of business to any other place anywhere in India.
4. That the business shall be carried on from principal place of the business but the Firm shall be at liberty to open branch or branches anywhere in India.
5. At the time of entering into this agreement, the Founders agree to take on the following roles in the Company:
  - i. Mr. Anand being the Chief Administrative Officer, is responsible for all administrative work & activities of the partnership.
  - ii. Mr. Bhagat being the Chief Marketing Officer, is responsible for all marketing work & activities of the partnership.
  - iii. Mr. Chaudhari being the Chief Finance Officer, is responsible for all finance work and activities of the partnership.
6. That initially the Partnership Firm shall carry on business for various sectors like Hospitality /Restaurants, Commercial Shops, Industrial, Housing, Farming, Offices,

Hospitals etc. It may deal in any other work which is decided mutually between the parties hereto from time to time.

7. That the business shall commence on a 10/01/2012 date as agreed upon by and between the parties hereto.
8. That the capital of the Partnership Firm shall be formed by a contribution of the parties hereto. However, the parties hereto have agreed to contribute following sum towards the capital of the firm at the initial stage.
  - i. Partner No.1- Rs. 5,00,000/-
  - ii. Partner No.2- Rs. 5,00,000/-
  - iii. Partner No.3- Rs. 10,00,000/-
9. That the net profit of the partnership firm after deduction of all expenses including rent, salaries, other establishment expenses, interest and remuneration payable to the partners in accordance with this deed of partnership or any supplementary deed as may be executed by the partners from time to time, shall be divided and distributed amongst the partners in the following proportion:
  - i. Partner No.1 – 30%
  - ii. Partner No.2 – 30%
  - iii. Partner No.3 - 40%

The losses, if any, including loss of capital suffered in any year shall be in the same proportion as mentioned above.
10. The capital of the Partnership Firm may be increased to any extent as per requirement of business. However, the contribution towards capital by the Partners at any time shall be in the ratio as mentioned in clause no. 8.
11. All the parties to this Partnership Firm have agreed to devote full time towards business of the Partnership Firm and shall actively participate in the activities of the Partnership Firm. It is hereby agreed to that in consideration of the said parties keeping themselves actively engaged in the business of the Partnership Firm and working as working partners, the Party of the First Part, Party of the Second Part and Party of the Third Part have mutually decided that after deduction of all expenses, taxes, etc. the net-profit shall be divided as per the ratio 60%-40%, wherein the 60% will be equally divided between the Party of the First Part and Party of the Second Part.

12. The remuneration payable to the working partners shall be computed in the manner laid down or deduction mentioned in the Income-tax Act, 1961 or any other applicable provision as may be in force in the income tax assessment of the partnership firm for the relevant accounting year.
13. Any further capital if and when required shall be contributed by the parties hereto according to the need of the business.
14. That the period of Partnership shall be at Will of Partners.
15. That the Partners agree to mutually alter or amend the terms and conditions laid down in the partnership as and when deemed fit and proper by all the Partners.
16. That accounting year of the Partnership Firm shall begin from the date of incorporation of the present partnership agreement till 31<sup>st</sup> March 2013 and the accounting year of the Partnership Firm for the subsequent year will start from 01<sup>st</sup> April and conclude on 31<sup>st</sup> March of subsequent year. The balance sheet and profit and loss accounts shall be prepared and drawn on year ending. That the profit/loss of the business shall be shared and born by the parties in the same manner where the share of incoming partner who is the legal heir of the deceased partner shall continue to be the same as that of the deceased partner.
17. That the parties hereto shall be true and faithful to each other and shall not do or cause to be done anything which may be detrimental to the interest of the firm.
18. That the **PARTNER NO. 3** shall keep or cause to be kept proper books of account and documents and shall make entries therein of all receipts, payments and other matters as is usually done and entered in the books of accounts kept by persons engaged in business similar to that of the firm. That the account of the business activities carried on by the Partnership Firm shall be maintained in the regular course of the business and such books of accounts shall be kept at the principle place and such accounts shall be open to inspection by the parties hereto at all reasonable hours. The parties shall be entitled to take extract and photocopies from such books of accounts. A general-accounts of all the assets and liabilities and profits and losses of the partnership for the year shall be prepared and such account shall be signed by all the partners. The accounts when signed by all the partners shall be conclusive and final between the partners as to all matters stated therein,

unless some manifest error is found within one month after the signing thereof, in which case such error shall be rectified.

19. That Banks accounts of the Partnership Firm shall be opened in any Bank which shall be operated jointly by the parties thereto.
20. That each party hereto has entered into Partnership in his individual capacity and not in any representative capacity.
21. That the terms and conditions contained herein may be changed by mutual consent of the parties hereto and in that event a Supplementary Deed shall be made part of this Deed.
22. That if the partners deemed fit and proper, they may admit, remove, replace any other person or persons as partners on the terms and conditions as may be mutually agreed amongst themselves.
23. That with respect to any matter connected with the affairs of the firm, which is not specifically provided for herein, the partners may make such agreements therefore and may set in such manner with regard thereto as may be agreed upon by and between themselves.
24. Neither partner shall without the consent of the other partner
  - i. Take any apprentice or employ or dismiss any agent or servant of the firm.
  - ii. Assign, mortgage or charge his share in the assets or profits of the firm.
  - iii. Draw, accept or indorse any bill of exchange or promissory note on account of the firm.
  - iv. Lend the moneys or deliver upon credit any of the goods of the firm to any person or persons, whom the other partner or partners shall have forbidden him to trust.
  - v. Enter into any bond or become surety for any person or persons or knowingly cause or suffer to be done anything whereby the partnership property may be endangered.
25. That on death of any of the parties hereto the Partnership Firm shall not dissolve and the heirs, successor or nominee of the deceased shall be taken as partners of the firm in place of the deceased and the firm shall be deemed as continuing firm.
26. If any of the partner commits any act of bankruptcy or any criminal offence or any breach of any of the provisions of this deed or do or suffer any act which would be a ground for the dissolution of the firm by the court or any partner becomes physically or mentally unfit

to attend the business, then in any such case, the other partners may within two month after becoming aware thereof, determine the partnership by notice in writing and in such case he or any other partners shall have the option of purchasing the share of the partner committing breach or default, in the capital and assets of the business.

27. If any of the surviving partner does not exercise the option of purchasing the share and interest of the deceased or if the partnership shall be determined during the lives of the partners, the partnership shall be wound up and assets will be distributed in terms of the Partnership Act, 1932.
28. The partners will have to give at least two-month notice either for dissolution of the firm or the retirement of the firm. In the event of death of any partner the firm shall not come to an end and the partnership in such a circumstance shall be reconstituted after conducting the legal heirs of the deceased partner. However, the share of the incoming partner/s shall be always proportionate to the initial ratio agreed between the parties here to in as much as the share of the original partner/s the same shall never be less than the share agreed to be given to the incoming partner.
29. **Dispute Resolution:** Partners hereby agree that they will, at all times, act in good faith and make all attempts to resolve all difference arising out of or in connection with this Agreement by discussing internally between themselves. However, if within 30 (thirty) days of the commencement of the discussions within themselves the dispute is not resolved the dispute shall be referred by the Partners to the Sole Arbitrator Mr. G. Bapat being a Retired Judge agreed upon by both Parties. Such Arbitration shall be in accordance with Indian Arbitration and Conciliation Act, 1996 as amended from time to time and seat for arbitration shall be Pune, Maharashtra. The Partners shall bear their own legal and other costs and expenses relating to the dispute, which has been submitted to arbitration in accordance with this clause, without prejudice to the arbitrator's right to award costs or require any party to the arbitration to pay the costs and expenses of another party thereto. All proceedings shall be in English. The Arbitration awards rendered shall be final and binding.
30. **Governing law and jurisdiction:** This agreement shall be governed by the laws of India. Any dispute or differences arising between the Parties in respect of this Agreement shall

be subject to the exclusive jurisdiction of Courts in Pune, within whose jurisdiction the principal place of business of the present partnership firm will have jurisdiction.

31. The Parties have mutually agreed to borne any incidental charges jointly in respect to the said Founders Agreement.

32. That for all other matters specially not mentioned in this Deed of the Partnership the provisions of the Indian Partnership Act, 1932 shall apply.

**IN WITNESS WHEREOF THE PARTIES HERETO HAVE SIGNED THIS DEED OF PARTNERSHIP IN PRESENCE OF THE UNDERSIGNED WITNESSES ON THE DATE OF ABOVEMENTION AT PUNE.**

<b>The Party of the First Part - The Partner No.1</b>		
(Left Hand Thumb Impression)	(Sign)	(Photo)

<b>The Party of the Second Part – The Partner No. 2</b>		
(Left Hand Thumb Impression)	(Sign)	(Photo)

<b>The Party of the Third Part - The Partner No.3</b>		
(Left Hand Thumb Impression)	(Sign)	(Photo)

<b>Witnesses No.1</b>	<b>Witnesses No.2</b>
Signature:	Signature:
Name:	Name:
Address:	Address:

**HOSPITAL INSTITUTION, OPERATIONS AND MANAGEMENT AGREEMENT**

This HOSPITAL INSTITUTION, OPERATIONS AND MANAGEMENT AGREEMENT (hereinafter referred to as “**Agreement**”) is made and executed in Pune and shall be effective as of **15th of February 2016** (hereinafter referred to as “**Effective Date**”)

**BY AND BETWEEN**

**PHOENIX HOSPITALITY**, a partnership firm registered under The Partnership Act, 1970 and having its Registered Office located at Business Avenue Complex, Model Colony, Pune - 411016, Maharashtra., hereinafter referred to as “**PHOENIX**” and “**Party No. 1**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its promoters, directors, successors, nominees, and permitted assigns; Represented by its partners and authorized signatories

1. Mr. Anand
2. Mr. Bhagat
3. Mr. Chaudhari

**AND**

Dr. Sharma, Age- 52 years, Occupation: Professional(MD) at, Residing at- Ajmera Aria, Flat Number 06, Koregaon Park 411 001, Maharashtra.

(Hereinafter referred to as “**Party No. 2**”) unless repugnant to the context or meaning thereof, be deemed to include its successors, nominees, and permitted assigns **PHOENIX** and **Dr. Sharma** shall be are hereinafter individually referred to as a “**Party**” and collectively as the “**Parties**”.

**WHEREAS;** PHOENIX is partnership firm engaged in various businesses and is desirous of entering in the business of medicine, healthcare, and has acquired a hospital

(Hereinafter referred to as “**said Hospital**”).

**WHEREAS;** Dr. Sharma is a practicing MD(Doctor of Medicine).

**WHEREAS;** PHOENIX is desirous of forming an association with Party No. 2 on account of Party No. 2 possessing the expertise and relevant experience to effectively conduct, manage and operate the said Hospital acquired by PHOENIX, independently, on a leave and licence basis.

**WHEREAS;** the Parties are desirous, for their mutual benefit, to associate themselves for taking forward provision of world class healthcare to the benefit of the community and public at large by synergizing their respective strengths and setting up and operating excellent medical facilities.

**WHEREAS;** Party No. 2 is agreeable to manage and operate the said Hospital under the PHOENIX brand name on the following Terms and Conditions

**AND WHEREAS;** the Parties have, in this regard, arrived at an understanding in accordance with the following terms and conditions with regards to the operation and management of the said Hospital.

**DEFINITIONS:** Unless repugnant to any law for the time being in force, the words appearing in this Agreement shall convey the meaning and interpretation as envisaged hereunder:

- i. **“Action”** means and includes any claim, demand, dispute, litigation, petition, suit, investigation, inquiry, proceeding, mediation, arbitration, conciliation, hearing, complaint, assessment, judgement, fine, penalty, order, decree, injunction or award, passed by either a judicial, quasi-judicial or administrative body or governmental authority, which includes both civil and criminal, and shall without limitation include any insolvency proceedings.
- ii. **“Agreement”** shall mean and include this Agreement entered into between PHOENIX and Party No 2 and shall include the Schedule/s, Annexure/s and Appendix/ices and any amendment, restatement or supplement in writing from time to time.
- iii. **“Contract”** means any written agreement, arrangement, contract, subcontract, understanding, instrument, note, warranty, insurance policy or benefit plan (whether or not the same is absolute, revocable, contingent, conditional, binding or otherwise).
- iv. **“Damages”** means any claims, causes of action, losses, costs or expenses (including attorneys’ fees and expenses and litigation costs and expenses), liabilities, penalties and damages.
- v. **“Encumbrance”** means and includes any mortgage, pledge, lien, interest, prior assignment, hypothecation, lawful right of other persons, claim, security interest, beneficial interest, title retention agreement, voting agreement, interest, option, charge, commitment, restriction, limitation or hindrance of any nature whatsoever, including restriction on use, voting, transfer, rights of pre-emption, receipt of income or exercise of any other attribute of ownership.
- vi. **“Force Majeure”** means and includes any of the following events, irrespective of the location or the duration of such occurrence of events and which are outside the control of

any Party: acts of nature (be it by way of land, water or air by whatever name called or referred to and includes hurricanes, typhoons, tornadoes, cyclones, other severe storms, winds, lighting, floods, ice, earthquakes, volcanic eruptions, fires, explosions, disease or epidemics), but not restricted to fires and explosions caused wholly or in part by human agency; act of war, armed conflict or other hostile action; civil war, revolution, rebellion, insurrection or usurpation of sovereign power, riots or other civil commotion, terrorism or the threat thereof (including sabotage, chemical or biological events, nuclear events, disease-related events, bombing, murder, assault and kidnapping); prolonged strikes or similar labour issues or disturbances, embargoes, blockades, shortage of critical material or supplies or action or inaction of or by Governmental Authorities that have an impact upon the Hospital including granting or revocation or cancellation or suspension of license, where such revocation or cancellation or suspension is not due to the fault of the party whose performance is to be excused for reasons of the force majeure, change in law, which leads to impossibility of performance.

**vii. “Governmental Authority”** means any government of any province, state in India; any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any government authority, agency, department, board, commission or instrumentality of Government of India, or any political subdivision thereof; any court, tribunal or arbitrator in India.

**viii. “Law”** means all statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental Authority.

**ix. “Hospital”** shall mean hospital located on all the piece and parcel of land as described in detail in attached Annexure under the name of PHOENIX SUPER SPECIALITY HOSPITAL, which is inclusive of Radiology, Pathology, Cardiology, OPD, Emergency, ICU, Hospitals and other allied medical, surgical and diagnostic services.

**x. “License”** means any license, permit, certificate, authorization, approval, consent, order, no-objection, waiver, ratification, permission, qualification or similar authority issued or granted by any Governmental Authority under or pursuant to applicable law.

**xi. “Tax” / “Taxes”** means all forms of taxation, duties (including stamp duties), levies, ceases, imposts and employer-employee contributions, whether direct or indirect including income tax, withholding tax, taxes on goods and services, custom duties, capital tax, property taxes, environmental taxes and any other type of or duties payable by virtue of

any applicable law and which may be due directly or indirectly in any relevant jurisdiction; together with any interest, penalties, surcharges or fines relating to any of the foregoing.

**xii. "Termination"** shall mean the expiry, rescindment or closure of this Agreement.

**NOW THEREFORE,** The Parties hereby agree to enter into this agreement and perform their respective obligations on the following terms and conditions:

1. **INSTITUTION OF HOSPITAL:** It is agreed under this agreement that the Parties shall institute a hospital at Kharadi, Pune. And whose terms and conditions for operations and management are listed in the clauses herein.
2. **SCOPE OF THE AGREEMENT:** PHOENIX hereby appoints Party No. 2 to exclusively conduct, manage and operate the Hospital under the name of **"Phoenix Super Speciality Hospital"** for Term agreed and on the terms and conditions set out herein through its team of consultants/faculty/doctors and other staff and Party No. 2 hereby accepts such appointment to exclusively conduct, manage and operate the said Hospital.
3. **TERM AND TERMINATION:** This agreement is valid for **10 years** from the Effective Date. Lock-in period shall be **5 years** from the Effective Date, neither party can terminate Agreement for any reason whatsoever before expiry of minimum lock-in period. Thereafter any of the Parties may terminate this Agreement by giving the opposite party ninety (90) days notice in writing at the address mentioned herein below, Notwithstanding the above, either Party may terminate this Agreement at any point of time in the event that the other Party materially breaches this Agreement and fails to cure such breach within ninety (90) days following written notice of such breach by the non-breaching Party. In case of any unforeseen situations, Party No. 2 can terminate this Agreement by paying an amount equivalent to balance rental amount till the end of Lock In period. PHOENIX can terminate this agreement within 90 days of Termination Notice.
4. **CONSEQUENCES OF TERMINATION:** Upon the termination of this Agreement, both parties shall meet within 7 days and mutually settle all accounts and logistics. Party No. 2 shall cease to perform all services. Both Parties shall be relieved and discharged from all liabilities, obligations or claims under this Agreement, except for such rights, liabilities and obligations of the Parties which have accrued under this Agreement prior to the termination/expiry or which survive the termination/expiry. After Termination or non-renewal of this Agreement, Party No. 2 will not hire or employ any of the doctors, nurses, partners, associates and staff associated with or part of the Hospital for 12 months from date of termination of this Agreement. After Termination of this Agreement, Party No. 2 will

cease to market itself or use the PHOENIX brand. Both parties will respect and value each other's reputation and will not indulge in any action with malafide intent to damage other's reputation. All empanelment's and accreditations shall be claimed and transferred to PHOENIX.

5. **RENTAL:** Party No. 2 agrees to pay a fixed sum of **Rs. 10,00,000/- (TEN LACS) (subject to 10% increase per year at the discretion of the licensor)** towards the monthly compensation. The rent has to be paid before the 10<sup>th</sup> day of every month in advance. Party No. 2 also agrees to pay deposit of Rs. 1,00,00,000/-, which will be interest free. Party No. 2 will have authority to operate account of PHOENIX ILF Pvt Ltd at Saraswat Bank for its banking transactions. All the income will be deposited in the account. Party No. 2 will make all payments to staff, salary etc. from that account. Party No. 2 will give monthly financial reports to Party No. 1 for all the transactions executed from the said account and shall also allow Party No 1 access to important financial documents like balance sheets, audit reports, financial transactions history and any other financial report and documents. Mr. Chaudhari is authorised to execute online payments from the account, however he cannot issue cheques, Demand Drafts, Promissory notes and other financial instruments of money transfer whereby the signatures of all three directors of the Company are needed. Party No. 2 will be responsible to pay all taxes (income tax, GST, others govt. taxes). Party No. 2 will furnish all necessary documents to party No. 1 after payment of all taxes.
6. **CLEARANCE OF DUES:** PHOENIX agrees and confirms that there are no dues, debts, expenses and liabilities which are pending payment and agrees to pay and clear the same if any.
7. **INSURANCE:** All Insurance payments including principal and interest/premiums with regards to the hospital building will be paid by Party No. 2.
8. **OBLIGATIONS OF PHOENIX:**
  - i. PHOENIX shall provide medical and non-medical infrastructure and facilities to Party No. 2 on an 'as is' current state basis, for setting up Hospital, enumerated but not limited to as follows:
    - a) Hospital Infrastructure with two OTs, ICU, General Wards, private and semi-private rooms, medical gas system, etc.
    - b) Civil structure including Beds and Furniture, and other medical equipment.
    - c) Mechanical, electrical, HVAC, fire-fighting and plumbing equipment required for the hospital.

- d) Power supply system
- e) Water supply and Treatment system
- f) Provision for waste disposal, including sewerage treatment plant
- g) Centralised or Split Air conditioning systems
- h) Fire detection, protection and extinguishing system, Security System, Telephone, Data and Networking System, Public Address System, Nurse Call, Access Control System
- i) Parking and Cafeteria
- j) Parking Facilities
- k) Pharmacy
- ii. A detailed list of all facilities, equipment and inventories will be recorded and submitted to Party No. 2 prior to the formal undertaking of the management facilities.
- iii. PHOENIX shall not, during the Term of this Agreement, invite a third party for provision of medical and clinical services at the hospital.
- iv. PHOENIX will not contact or influence any partners or associates of Party No 2, directly or indirectly for any information or privilege.
- v. PHOENIX will not approach, coerce or lure, directly or indirectly, to any employee, team member, professional, partner or associate of Party No 2 with objective of offering them job that could adversely affect management and operations of Party No 2.

**9. OBLIGATIONS OF Party No. 2:** Party No. 2 shall exclusively conduct, manage and operate the hospital and shall provide quality service, using adequate skill, care and diligence in accordance with the prudent industry standards and practices. Party No. 2 shall provide its expertise to upgrade and to help implementation of proper and prudent management policies and procedures as it deems appropriate for the operation and management of M/s. PHOENIX ILF Pvt LIMITED. To this effect, Party No. 2 agrees to:

- i. Shall fully fund, manage, upgrade and operate PHOENIX SUPER SPECIALITY Hospital including the appointment of clinical, non-clinical, and general operations.
- ii. Shall appoint Clinical consultants on time sharing basis as needed, including but not limited to:
  - a. General Medicine
  - b. Obstetrics and Gynaecology
  - c. Emergency Medicine

- d. Cardiology
  - e. Neurology & Neurosurgery
  - f. Gastroenterology
  - g. Nephrology & Urology
  - h. Ortho & Joint Replacement
  - i. Paediatrics and Paediatrics Intervention
  - j. Liver, Renal & Heart Transplantation
  - k. Clinical and Surgical Oncology
  - l. General and laparoscopic Surgery.
- iii. Shall fund, manage and operate, upgrade, professionalize and promote 24 hours Pharmacy under the brand name PHOENIX Medical.
- iv. Shall manage and operate, upgrade, professionalize existing diagnostic lab and promote 24 hours Lab under the brand name.
- v. Party No. 2 shall solely be responsible for Maintenance, Housekeeping and Security Teams.
- vi. Party No. 2 shall solely be responsible to pay entire Operational/Manpower costs and expenses including entire Manpower, Electricity and CMC/AMC of Equipment and including:
- a. Payment/salaries to Medical Consultants
  - b. Payment/salaries to Para Medical staff
  - c. Payment/salaries to Nursing staff
  - d. Payment/salaries to Administrative staff
  - e. Payment/salaries to Security staff
  - f. Payment to Electricity, Water and Sewerage Charges
  - g. Annual maintenance charges of equipment
  - h. Repairs of Medical and Non-Medical Equipment
- vii. Party No. 2 shall strictly adhere to the all laws, Rules, Regulations related to Medical, Non-Medical, Para Medical, Nursing staff, operations staff, administrative staff and also for services provided by PHOENIX SUPER SPECIALITY Hospital. Any violation of any law time being in force by Hospital (Civil and Criminal), Party No. 2 shall solely be responsible for costs and consequences thereof.

- viii. Party No. 2 shall absorb current team of Marketing / Administration / Operations into PHOENIX SUPER-SPECIALITY HOSPITAL as per their current profile and remuneration.
- ix. Upgrade facility through suggesting Civil and Engineering Work in consultation with PHOENIX. PHOENIX agrees to bear the costs and expenses for upgradation.
- x. Identify necessary human resource(s) as required for smooth and efficient running and operation of the Institute. On identification, Party No. 2 shall recruit and appoint the identified human resource(s). All decisions with respect to the hospital Employees and the Medical Consultants, including decisions in relation to their remuneration, appraisal, promotion, pay revision, suspension and termination shall be taken by Party No. 2. It shall be expressly noted that Party No. 2 shall be or deemed to be the employer of any organisation, company, employee or consultant which hospital employs or appoints for any remuneration or consideration.
- xi. Appoint and terminate such personnel as required. The Management Personnel and staff shall be directly recruited and remunerated by Party No. 2 and Party No. 2 shall be responsible for all tax deductions on the remuneration paid to the said Management Personnel and staff for the payment of applicable statutory benefits and compliances with applicable labour laws, in relation to the Management Personnel and staff.
- xii. Fix charges for the cash and company patients and share accordingly with PHOENIX.
- xiii. Manage and operate, upgrade and/or purchase appropriate bio-medical and medical equipment.
- xiv. Fund, manage and operate key strategic and investment decisions with respect to the management/ expansion of the Hospital. Where structural and physical alterations are necessary, Party No. 2 shall take a decision in consultation with PHOENIX.
- xv. International / Foreign Radiologists, Pathologists and other Specialists hired by Party no. 2 should be duly certified by MCI to practise anywhere in India. State Medical Council has no authority of certifying foreign doctors. Completing all legal formalities in this regard is the responsibility of Party No. 2 that will be completed as per prevailing law and norms. PHOENIX will not interfere in registration proceedings in any manner.
- xvi. Party No. 2 shall also be responsible for:

- a. Implementing quality protocol in the Hospital and extend such cooperation and guidance as is necessary to the PHOENIX for securing accreditation from appropriate Boards and Authorities.
  - b. Formulate policies/systems for the awareness/publicity campaigns for hospital and the medical services offered.
  - c. Execute staffing/recruitment of personnel at hospital, including doctors, technicians, non-technicians, nurses and third-party contract employees. This shall include identifying human resource(s) as may be required for smooth and efficient running and operations.
  - d. Party No. 2 shall aim to set up a quality clinical team and provide quality diagnostic care.
  - e. Party No. 2 shall set up other hubs, spokes, satellite centres, clinics and outstation OPDs.
- xvii. Party No. 2 shall bear all the necessary statutory payments arising from the operations and management of the hospital.
- xviii. Party No. 2 shall submit a monthly financial report for the perusal and record of PHOENIX.

**10. INTELLECTUAL PROPERTY RIGHTS & CONFIDENTIALITY:** Confidential Information shall mean any information disclosed by one Party (“Disclosing Party”) to the other Party (“Receiving Party”), in any form whether tangible or intangible, including without limitation documents, business plans, source code, software, technical/ financial/ marketing/ customer/ business information, specifications, analysis, designs, drawings, data, computer programs, any information relating to personnel or affiliates of a Party and include information disclosed by third parties at the direction of a Disclosing Party. If any information is disclosed orally, it shall at the time of disclosure be identified as confidential and shall be summarized and designated in writing by the Disclosing Party and delivered within 30 days of disclosure to the Receiving Party to qualify it as Confidential Information. Confidential Information shall however, exclude any information which (i) is/ was publicly known or comes into public domain without any breach of this Agreement; (ii) is received by the Receiving Party from a third party, without breach by the Receiving Party or such third party of this Agreement or any other confidentiality or non-use obligation towards Disclosing Party; (iii) was already in the possession of Receiving Party, without confidentiality restrictions, at the time of disclosure by the Disclosing Party; (iv) is permitted for disclosure by the Disclosing Party in writing; (v) independently developed

by the Receiving Party without use of Confidential Information; (vi) is required to be disclosed by the Receiving Party pursuant to any order or requirement from court, administrative or governmental agency, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such order or requirement and an opportunity to contest or seek an appropriate protective order. Neither of the Parties shall, at any time, without the consent of the other Party, divulge or offer or permit its officers, employees, or agents to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them to properly carry out their duties), any information relating to the negotiations concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party or any proprietary information of the other Party. In the event of termination, the Parties shall promptly hand over all relevant data, records, information etc. and any other material made available pursuant to this Agreement, without retaining any notes, duplicate copies, reproductions or summaries thereof. The obligations of the Parties in this clause shall survive the termination of this agreement. Any training material, literature, hardware, software, design data, engineering data, scientific data, specifications, methods, operations, technical information, designs, processes, procedures, passwords, discoveries, patents, patent applications, trade secrets, concepts, ideas and any other proprietary information provided to Party No 2 under this contract are presumed to be confidential and proprietary information of PHOENIX. All such proprietary items shall be solely used for the purpose of this Agreement and shall not be disclosed to any third party unless PHOENIX advises in writing.

11. **GOVERNING LAW AND JURISDICTION:** This Agreement shall be construed, interpreted and governed by the laws of India, without reference to conflict of laws principles. Parties mutually and unequivocally agree that the courts, tribunals and judicial authorities situated in Pune shall have jurisdiction to try and hear any matter or dispute that arises between the parties.
12. **ARBITRATION AND DISPUTE RESOLUTION:** In case any dispute, difference or question arises and cannot be settled mutually between the parties, touching the intent, construction, meaning or effect of this Agreement or any clause or anything herein contained or the rights or obligations of the parties hereto under this Agreement or otherwise in relation to this Agreement, shall be referred to and in accordance with the “Dispute Resolution” Clause i.e. Clause 29 of the partnership deed of Phoenix Hospitality dated and executed on 10th of January, 2012.

13. **LIMITATION OF LIABILITY:** There shall be no limits on the liability of Dr. Sharma for its responsibilities under this Agreement. Dr. Sharma shall be liable for all civil and criminal actions including damages, including direct, indirect, general, consequential, special and incidental, arising out of this Agreement. PHOENIX makes no warranties express, statutory, implied, or otherwise, and it specifically disclaims the specific or implied warranties and conditions of merchantability and fitness for a particular purpose. PHOENIX shall not be liable to Party No. 2 or any third party for any indirect damages including towards costs of procurement of substitute goods, lost profits or any other special, consequential, incidental or indirect damages, however caused, and whether based on contract, tort (including negligence), products liability or any other theory of liability, regardless of whether Party No. 2 has been advised of the possibility of such damages. Party NO. 2 shall be liable to PHOENIX for damages including costs, charges and third-party claims arising if any, in respect of this agreement.
14. **FORCE MAJEURE:** Force Majeure means occurrence of event which prevents the Party claiming Force Majeure from performing its obligations under this Agreement and which act or event mean acts of god, earthquakes, landslides, floods, volcanic eruptions or act of war, invasion, armed conflict; or expropriation or compulsory confiscation by any competent authority of any equipment; or any event which is beyond reasonable control of and not arising out of the fault or negligence of the affected party or failure of such party to perform its obligations hereunder. In such an event, the obligations of the parties shall extend by the period for which Force Majeure Event subsists and the Parties shall bear their respective costs arising out of such Force Majeure Event. For so long as the Party is affected by such Force Majeure Event, it shall provide the other Party with regular written reports containing information on the Force Majeure Event.
15. **DAMAGE AND REPAIR:** Party No. 2 shall maintain the ORALCE SUPER-SPECIALITY HOSPITAL with it's equipment and instruments in good repair and condition, and shall make or cause to be made such routine maintenance, routine repairs and alterations as it determines is necessary for this purpose including (a) carrying out all repair, renovation and interior work that it may consider necessary in the Hospital; (b) paint the exterior or interiors of the Hospital and any part thereof. Party No. 2 in conformity with PHOENIX may undertake any major and structural repair to rectify any major defect, flaw and damage in the Hospital, facilities, and equipment or any part thereof (including the outer walls, buildings and ceilings of the Hospital and/or any civil works, plumbing or electrical wiring within the Hospital and/or appurtenances thereto (including electricity

cables, water and sewage systems) with a view to restore such damaged portion to its original condition. All major and minor costs and expenses shall be borne by Party No. 2. Party No. 2 shall ensure to process the claim from the insurance carriers.

16. **INDEMNITY:** Party No. 2 shall defend, indemnify, protect and save harmless PHOENIX and their directors, officers, agents, servants and employees from and against any and all suits, claims, demands, awards, losses or damages of whatsoever kind or nature arising out of any negligent act, error or omission of its directors, managers, agents, servants, employees, subcontractors and retainers, in the performance of the services under this Agreement, including, but not limited to, reasonable expenditures for, and costs of, investigation, hiring of expert witnesses, court costs, counsel fees, settlements, judgments, or awards.
17. **AUTHORITY & PERFORMANCE:** Both parties have the legal right and full power and authority to enter into and perform this Agreement and any other documents to be executed by it pursuant to or in connection with this Agreement. Both parties have obtained all necessary corporate and other Licenses in relation to the performance of this Agreement. No event has occurred and no matter, condition or state of fact or thing exists, that would or is reasonably expected to be likely to, materially and/or adversely affect the ability of the parties to operate and manage the Hospital in the manner contemplated under this Agreement. The execution, delivery and performance of this Agreement by Party No. 2 shall not conflict with or result in any breach or violation of any of the terms and conditions, violate any lien, court order, judgment, injunction, award, decree, writ or any other restriction of any kind against, or binding upon, Party No. 2 or upon its properties or business; or violate any law or regulation of India which would affect the transaction contemplated under this Agreement.
18. **MISCELLANEOUS:**
  - i. **Relationship:** Both Parties, in the performance of this Agreement, shall be and act as Associate Partners. No provision of this Agreement shall constitute either Party as employee, legal representative or agent of the other, nor shall either Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other Party except as provided expressly under this Agreement.
  - ii. **Amendment:** This Agreement may not be amended, modified or any provision waived except by an instrument in writing signed by the Parties hereto.

- iii. **Severability:** If any of the provisions of this Agreement become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.
- iv. **Notice:** Any notice or other information required or authorised by this Agreement to be given by one Party to another may be given by hand or sent by registered Post, in writing, to the other Party at the address referred to in this Agreement or at such other address as the Party may, from time to time, notify the other Party.
- v. **Assignment:** No Party shall assign this Agreement without the prior written consent of the other Party.
- vi. **Entire Agreement:** The Parties agree that this Agreement is the complete and exclusive statement of the agreement between the Parties which supersedes all proposals or prior agreements, oral and written, and all other communications between the Parties relating to the subject matter of this Agreement.
- vii. **Counter Parts:** The parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it. This Agreement may be executed in two (2) sets. Each copy shall be considered as an original.
- viii. **Name & Branding:** The Parties agree that the provision of services by Party No. 2 shall be branded, promoted and marketed by Party No. 2 and PHOENIX. Any and all announcements or advertisement with respect to this collaboration or provision of services by Party No. 2 at the Hospital shall be jointly made by the Parties. The cost of branding, promoting, marketing and advertising activities shall be borne by Party No. 2. Name of the Hospital will be ORALCE SUPER-SPECIALITY HOSPITAL.
- ix. **Amendments:** No modification or amendment of this Agreement shall be binding on the Parties unless confirmed in writing by the Parties or by their duly authorised representatives.
- x. **Expansion of Collaboration:** This Collaboration between the parties can be expanded and extended to other region/ Country upon mutual agreement between the parties. A new company may be registered during the term of this agreement wherein, all empanelment will be transferred to the new entity, along with any old receivable accounts.
- xi. **Publication:** Neither Party shall, without obtaining written consent from the other party, make an announcement, or publicise in any manner whatsoever, the contents of this Agreement, the transaction contemplated hereunder or any other matter related hereto

unless such disclosure is required by applicable Law, in which case such party shall endeavour to consult with the other Party prior to making the required disclosure.

- xii. **Third Party Benefit:** Nothing herein contained is intended, nor shall be construed to confer upon any third party any right, remedy, claim under or by reason of this Agreement. This Agreement shall incur to the benefit of, and be binding upon, the Parties and their respective shareholders and/or members.
- xiii. **Relationship:** This Agreement is intended solely as a partnership for setting up, managing and running the Hospital and no employment, agency, franchise, or other form of agreement or relationship is intended to be created between the Parties. It is specifically understood between the Parties that the relationship between Parties contemplated under this Agreement is strictly on a principal to principal basis. Nothing in this Agreement will be construed to make the employees/representatives of one Party to be construed as the employees/representatives of the other Party. Either Party shall have no authority to make any contract in the name of or otherwise to bind the other or any of its subsidiaries or affiliates.

**READ, AGREED AND SIGNED UPON BY THE PARTIES OR BY THEIR DULY AUTHORISED REPRESENTATIVES:**

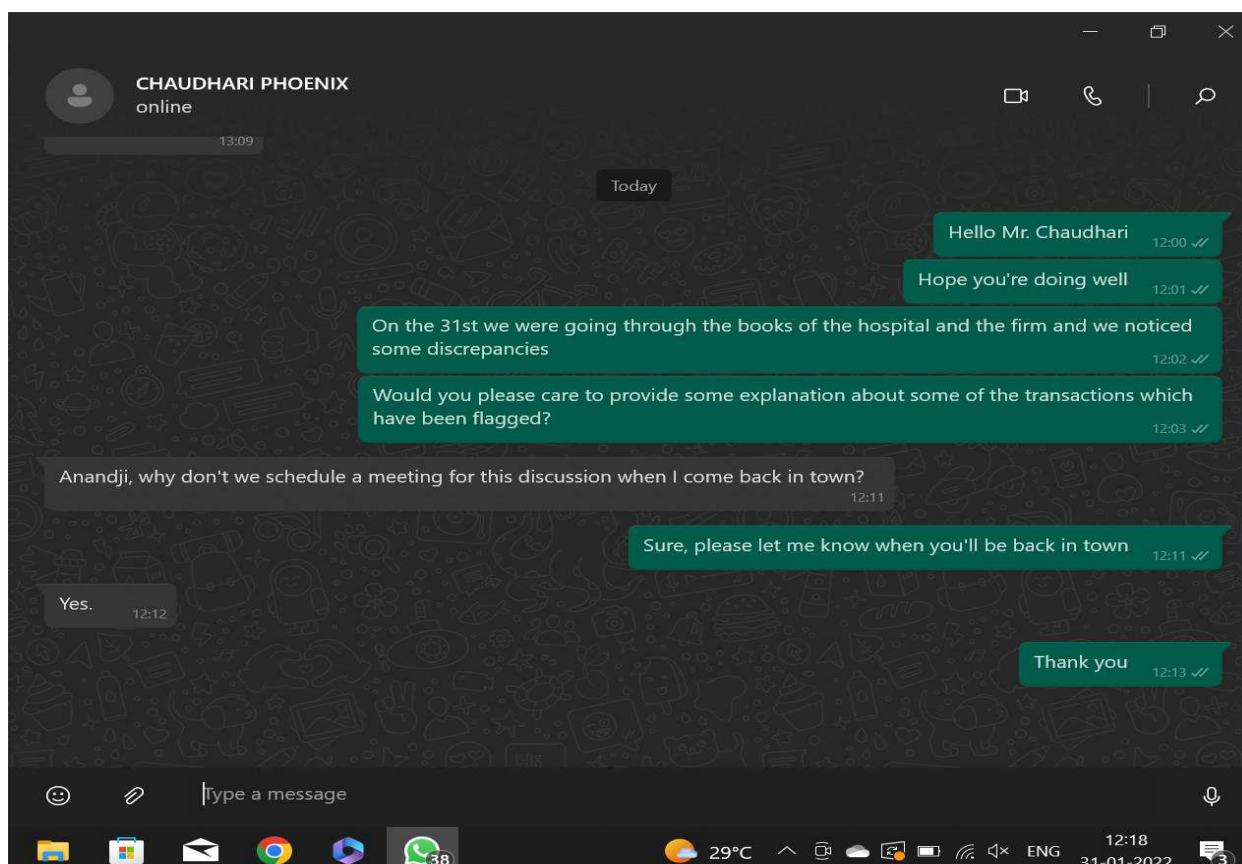
<b>The Party of the First Part - The Partner No.1</b>		
(Left Hand Thumb Impression)	(Sign)	(Photo)

<b>The Party of the Second Part – The Partner No. 2</b>		
(Left Hand Thumb Impression)	(Sign)	(Photo)

<b>Witnesses No.1</b>	<b>Witnesses No.2</b>
Signature:	Signature:
Name:	Name:
Address:	Address:

## ANNEXURE 3

### ANNEXURE 3.1: WHATSAPP CHAT



### ANNEXURE 3.2: EMAIL

2/2/22, 12:57 PM

Gmail - Request For Clarification On The Books Of Accounts



#### **Request For Clarification On The Books Of Accounts**

1 message

2 February 2022 at 12:57

To: mr.chaudhari@phoenixhospitality.com

Cc: dr.sharma@phoenixsuperspecialityhospital.com, mr.anand@phoenixhospitality.com, mr.bhagat@phoenixhospitality.com

Dear Mr. Chaudhari,

In a recent perusal of the Books of Account we have come across certain discrepancies in the books of Phoenix Hospitality and the Phoenix Super Speciality Hospital .  
Namely:

1. **Rs. 3,00,00,000 (THREE CRORES)** were found to be missing from the books of accounts of the (PARTNERSHIP FIRM) from the months of April 2020 to November 2020 on various instances;
2. **Rs. 5,00,00,000 (FIVE CRORES)** were found to be missing from the books of accounts of the (HOSPITAL) from March 2020 to November.

We request you to provide a detailed clarification along with your bank statements from February 2020 to the present date and receipts of transfers to other bank accounts since you have been handling the books of accounts for both the entities.

**REGARDS**

**PHOENIX HOSPITALITY & PHOENIX SUPER SPECIALITY HOSPITAL**

Date: 15/2/2022

Place: Pune

**LEGAL NOTICE**

(BY R.P.A.D)

To,

**Mr. Chaudhari**

Dear Sir,

In pursuance of the instructions and authority of my clients, PHOENIX HOSPITALITY AND PHOENIX SUPER SPECIALITY HOSPITAL (hereinafter referred to as 'the firm') and its directors Mr. Anand, Mr. Bhagat and Dr. Sharma, I hereby serve upon you this Legal Notice, the contents of which are as follows:

1. This Legal Notice is being served upon you following violation and failure to perform your obligations and terms agreed upon by you in the Deed of Partnership with Effective Date 10<sup>th</sup> January 2012 and Hospital Institution, Operation and Management Agreement with Effective Date 15<sup>th</sup> February, 2016.
2. My clients state that several discrepancies were noticed in the books of accounts of the Firm and PHOENIX Super Speciality Hospital. The discrepancies being
  1. Rs. 3,00,00,000 (THREE CRORES) were found to be missing from the books of accounts of the (PARTNERSHIP FIRM) from the months of April 2020 to November 2020 on various instances;
  2. Rs. 5,00,00,000 (FIVE CRORES) were found to be missing from the books of accounts of the (HOSPITAL) from March 2020 to November 2020.
3. My clients state that, on the 2nd February 2022 had sent you an electronic mail regarding clarification on the books of accounts of the PARTNERSHIP FIRM and the HOSPITAL, and requested you to provide a detailed clarification along with your bank statements from February 2020 to till date and receipts of transfers to other bank accounts since you had been handling the books of accounts for both the entities, and the same electronic mail was ignored by you.
4. My clients state that, you have been misappropriating the funds of the entities in question for wrongful gain to yourself and wrongful loss to my clients.

5. My clients also state that you have been receiving profits from the funds misappropriated by you, to which my clients are entitled. By your actions you have wrongfully been adding funds to your personal coffers and have been cheating my clients of the money that they are entitled to.
6. My clients state that being considerate of the business relation shared between my clients and you over the years, they are inclined to provide you with one last chance to provide my clients with detailed submission of documents and evidences, a timeline of 15 days from the date of receiving the notice to being the reparations of the fund you have misappropriated.
7. After the expiry of the time period given to initiate the reparations of the funds you have misappropriated that is 4th of March, 2022, after 15 days of such date, owing to your misconduct, misuse of position and misappropriation of funds, my clients will invoke the arbitration clause i.e. Clause 29 and Clause 12 of the Partnership Agreement and the Hospital Institution, Operations and Management Agreement respectively.

Please take note that this Notice is not intended nor shall it be construed as a complete recitation of the facts and events concerning the above-referenced matter, nor shall it be construed as a waiver of any rights, remedies or claims, legal or equitable, which my client is entitled to.

**Advocate**

DATE- 19/2/2022

PLACE- PUNE

**NOTICE IN REPLY**

(BY R.P.A.D)

To,

**1. PHOENIX HOSPITALITIES**

**A. Mr. ANAND**

**B. Mr. BHAGAT**

**2. PHOENIX SUPER SPECIALITY HOSPITAL**

**A. Dr. Sharma**

**SUBJECT- REPLY TO YOUR NOTICE DATED 15/2/2022**

Dear Sirs,

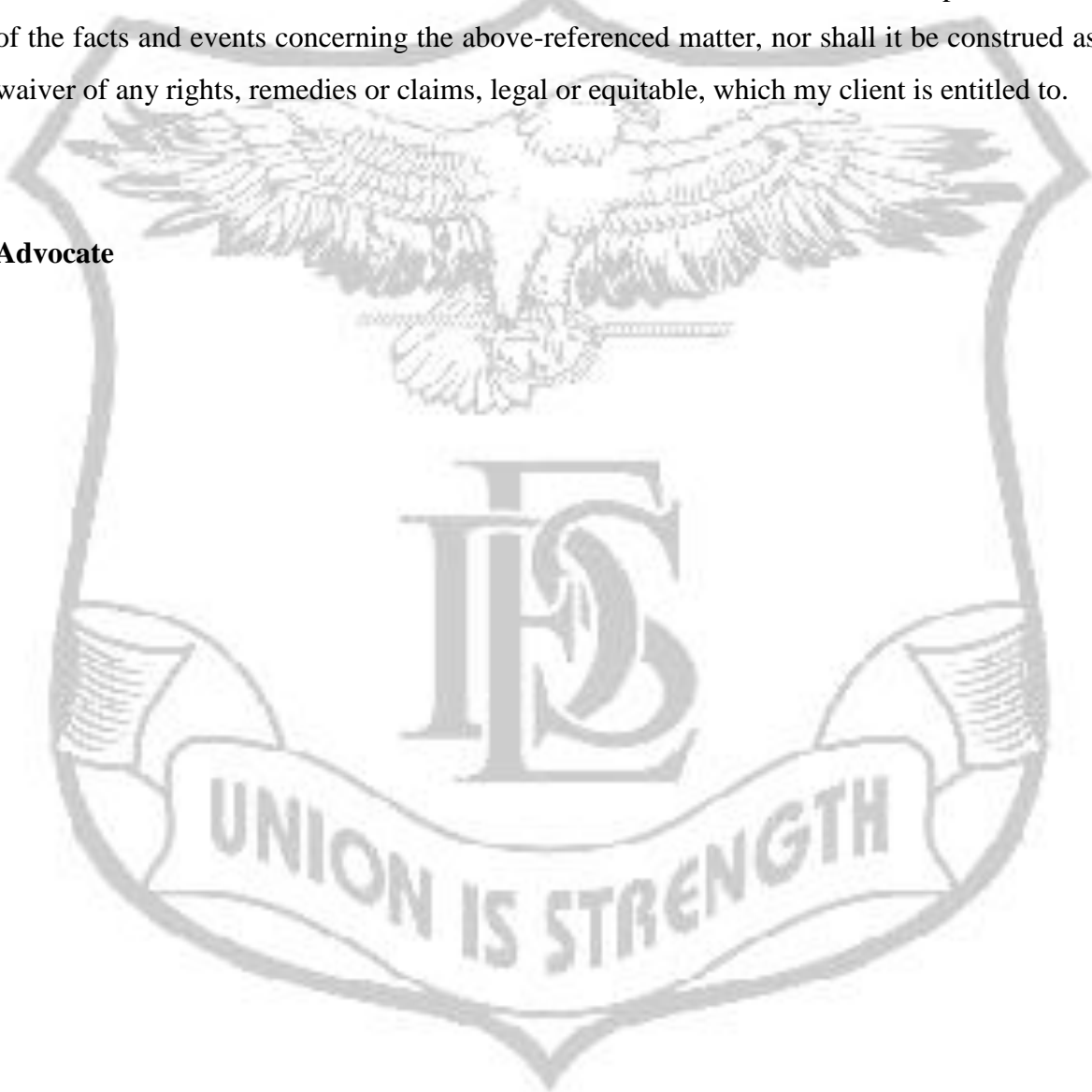
In pursuance to your notice dated 15/02/2022, served upon my client Mr. Chaudhari, and in pursuance of instructions and authority of my client, I served upon you this Notice in Reply.

1. That, at the very outset, it is stated that all the allegations and contentions of the said Legal Notice dated 15/02/2022 are false, fabricated and frivolous. That the allegations and contentions stated in the said Legal Notice are based on concocted facts and therefore no claim is made out against my client.
2. My client states that, he is serving as the Chief Financial Officer of PHOENIX HOSPITALITIES, and is the Chief Officer of Finance, Administration and Marketing for PHOENIX SUPER SPECIALITY HOSPITAL.
3. My client states that, any transaction that he has made to his account from the account of PHOENIX HOSPITALITIES is valid and legal since he is the CFO and a 40% Partner of the firm.
4. My client states that any transaction that he has made to his account from the account of PHOENIX SUPER SPECIALITY HOSPITAL is also valid and legal since he is the head of CFO for the hospital.

5. My client states that, any transaction that he has made to his personal account is valid, legal and well within his right, the same shall be defended by my client in his STATEMENT OF DEFENCE during the arbitral proceedings.
6. That you are hereby charged with the cost of Rs. 10,000/- for issuance of this notice in Reply, which you may please note.

Please take note that this Notice is not intended nor shall it be construed as a complete recitation of the facts and events concerning the above-referenced matter, nor shall it be construed as a waiver of any rights, remedies or claims, legal or equitable, which my client is entitled to.

**Advocate**



**STATEMENT OF CLAIM**

**BEFORE THE HONOURABLE SOLE ARBITRATOR, MR. G. BAPAT, PUNE**

Arbitration Case Number: 01/2022

In Case between:

**1. Phoenix Hospitalities**

*A registered partnership firm,  
Under the Partnership Act, 1932  
Through its partners,*

**Mr. Anand,**

Age- 45 years  
Residing at- Kumar Clove, Flat 111  
Near Goodwill society, Aundh 411 007,  
Pune, Maharashtra.

**Mr. Bhagat,**

Age- 44 years,  
Residing at- Sindh Society, House Number 09,  
Aundh 411 007, Pune, Maharashtra.

...Claimant No.1

**2. Phoenix Super Speciality Hospital**

*A registered company,  
Under the Companies Act, 2013  
Through its director*

**Dr. Sharma,**

Age- 52 years,  
Residing at- Ajmera Aria, Flat Number 06,  
Koregaon Park 411 001, Maharashtra.

...Claimant No.2

...(Claimants)

Versus

**Mr. Chaudhari,**

Age- 43 years,  
Residing at Cosmos Regency, Flat Number 08,  
Baner 411 045, Pune, Maharashtra

...Opponent

**STATEMENT OF CLAIM** on behalf of the Claimants is most respectfully submitted as under:

1. That the Claimants state that, the Claimant No.1 and Opponent are partners of a registered Firm styled as *Phoenix Hospitalities* having its registered office at Business Avenue Complex, Model Colony, Pune -411016, (*hereinafter refereed as 'the said Firm'*). The said firm is into the business of hospitality and other related services within the State of Maharashtra, India. Claimant N0.2 is a doctor and has a renowned name and reputation in the field of medical.
2. The Claimants state that, the Opponent is a partner of the said Firm and the same has certain rights, duties, liabilities etc. under the 'Deed of Partnership' dated 10/01/2012. Further, the said Partnership deed has been executed and registered on the same day i.e. 10/01/2012.
3. The Claimants further state that, the role and designation of the partners of *the said firm* admittedly has been enshrined as per clause 5, the business of the firm has been enumerated in clause and the profit sharing of *the said Firm* has been agreed as per clause 9 of the said partnership Deed dated 10/01/2012.
4. The Claimants state that in 2015, the Opponent proposed to the Claimant No.1 to invest the funds of *the said firm* by investment in a new venture i.e. for establishment of grand super-speciality hospital with the Claimant No.2 herein. The Claimants further state and submits before this Honourable Arbitrator that, the Opponent perused the Claimant No.1 and concluded 'Hospital Institution, Operation and Management Agreement' dated 15/02/2016 at Pune (*hereinafter for the convenience referred as 'HIOMA'*) with Claimant No.2 herein.
5. The Claimants state that, as per the terms and conditions of *said HIOMA* the investment, board of directors and profit percentage along with operations and management of the hospital were mutually agreed between the parties herein. The Claimants further state that, on 15/02/2016 a land was purchased by the partners of the Firm in the name of the hospital at Kharadi, Pune. Furthermore, the hospital was constructed and inaugurated on 01/01/2019 under the name as "Phoenix Super Speciality Hospital" (*hereinafter for the convenience referred as PSSH*) and the same has been registered as under the Companies Act, 2013. The Claimants state that, on 15/02/2016 it was decided between the parties that the Board would consist of Claimant No. 2 and Opponent and other partners of the Claimant No.1 as Chief Administrative Officer, Chief Marketing Officer and the Chief

Finance Officer respectively. Thereafter, the Claimants herein provided all the support and trust upon the Opponent. The success of the new venture was due to the combined efforts of the parties to the present arbitration Petition. Additionally, due to the global pandemic caused by Covid-19, the **PSSH** turn out to be a pillar for the nation in providing the best medical facilities. However, unfortunately it turned out to an unpleasant shock when the Claimant No.1's partner Mr. Anand came across financial irregularities and gross errors to the tune of Rs. 3,00,00,000/- (Rupees Three Crores Only) in the books of accounts of the said Firm. The same was rechecked by the other partner of the firm.

6. The Claimants further state that, when the Claimant No.1 sought explanation from the Opponent, the reply and respond was not only vague but the same was strange since the Opponent gave an excuse of burdened by the work and business of **PSSH**.
7. The Claimants further state that, subsequently the claimant No.1 disclosed the same fact of financial irregularities and gross manipulation of accounts to Claimant No.2 and requested to look into the accounts of **PSSH**. The Claimant No.2 through tax and audit firm *PWC* gave a qualified report disclosing that there are gross violations and irregularities in the accounts to the extent of Rs.5,00,00,000/- (Rupees Five Crores Only). The report also states that the Opponent has become insolvent. The said disclosure by the said tax and audit firm stunned the claimants herein.
8. The Claimants further state that, the Claimants made every effort in January 2022 to get the clarifications from the Opponent herein. However, the Opponent wilfully ignore to clarify his stand and additionally chose not to visit the office. Hence, the Claimants sent an email dated 02/02/2022 to the Opponent's official and personal email address to seek the explanation with an intimation that, if the Opponent fails to reply or give his stand/ clarification then the Claimants would be bound to initiate the arbitration against the Opponent.
9. The Claimants state that, it is pertinent to note by this Hon'ble Arbitrator that, the Claimants have conducted the audit of the said Firm and **PSSH** through tax and audit firm *PWC* and it was disclosed in the report that financial irregularities began from the month of April, 2020 till November, 2020 and March,2022 – November, 2020. The Claimants further state that, additionally it was stated by *PWC* in its report that, the Opponent has invested huge sum of the Claimant No.1 i.e. from the accounts of the Firm and personally in Sigma Pvt. Ltd. a pharmaceutical company which made huge profit and income due to Covid-19. However, due the business failure i.e. death caused to patients in vaccine and suspension of the license of the said company, the Opponent lost huge sum invested in it.

It is relevant to note by this Arbitrator that, the said investment which was made by the Opponent was without in authority and consent of the Claimants.

10. The Claimants further state that, on 15/02/2022 a legal notice was sent to the Opponent through their advocate for settlement of the dispute within 15 days failing which the Claimants would initiate the arbitration proceedings as per clause 29 of the Partnership deed and as per clause 12 of the HIOMA respectively. Thereafter, the Opponent gave notice reply through advocate dated 19/02/2022 with the assertion to the arbitral proceedings and emphasizing that his action and conduct was within the purview of partnership Deed and within the purview of law. The said reply by the Opponent was mere incorrect factual facts and denial of his gross failure to adhere with the terms and conditions of the Partnership Deed and as per MOA/AOA of the Company.
11. The Claimants additionally state that, the Opponent has derived the personal benefits and without any express or implied consent from the Claimants has invested funds of the firm and PSSH which resulted into huge loss. Furthermore, the Opponent has committed such financial irregularities wilfully with a mala-fide intention to defraud the Claimants. The Claimants further state that such manipulations and diversion funds has caused tremendous financial loss and smooth function of the firm and PSSH.
12. The cause of action of filing the present statement of claim surfaced when the Opponent breached the terms and conditions of the partnership deed and HIOMA. It further arose when the Opponent failed to give detailed and genuine reply to the intimations via email and legal notice of the Claimants.
13. This Hon'ble Tribunal has the jurisdiction to try and adjudicate the proceedings on merits as per the undisputed arbitration clauses as mentioned in the Partnership Deed, HIOMA and assertion of the Opponent in accepting the jurisdiction of this Hon'ble Tribunal.
14. The present Statement of claim has been submitted within the limitation period before the Hon'ble Tribunal. Hence, this tribunal may adjudicate the proceedings with the time period of twelve months.
15. The Claimants would abide by the schedule IV of the Arbitration and Conciliation Act, 1996 and amended law and the direction of this Hon'ble Tribunal to deposit the Arbitrator's fee.
16. Therefore, it is prayed before this Hon'ble Arbitrator that:
  - A. The statement of claim filed by the Claimants may be allowed.
  - B. The Opponent may be directed to refund/ repay an amount of Rs. 3,00,00,000/- to the claimant No.1.

- C. The Opponent may kindly be directed to refund/ repay an amount of Rs. 5,00,00,000/- to the claimant No.2.
- D. The Claimant may be directed to pay an interest of 12% per annum from the April 2020 till final realisation of amounts as prayed in prayer 16) A. and 16) B., to the claimants.
- E. The Opponent may be restrained in participating into the affairs of the firm and the company.
- F. The Opponent may be directed by an interim award not to interfere in any manner through his agents, authorised representatives or power of attorney holders into the said firm or the company till final award is passed.
- G. The Opponent may be directed to pay all the cost of the present arbitral proceedings.
- H. The Claimant may be allowed to amend, alter or modify the present statement of claim.
- I. Any other order as this Hon'ble Arbitrator deems fit may pass in the interest of justice.

Pune.

Dated: 28/02/2022

Claimants

Advocate for the Claimants

**VERIFICATION**

We, Mr. Anand, Mr. Bhagat and Dr. Sharma, the claimants in the present arbitral proceedings state on solemn affirmation that the contents of paragraphs 1-15 in the statement of claim are true and correct facts and prayers sought in paragraph 16 are as per the legal advice.

Pune

Dated: 28/02/2022

Signature/s

Advocate for the Claimants

**STATEMENT OF DEFENCE**

**BEFORE THE HONOURABLE SOLE ARBITRATOR, MR. G. BAPAT, PUNE**

Arbitration Case Number: 01/2022

In Case between:

**1. Phoenix Hospitalities**

*A registered partnership firm,  
Under the Partnership Act, 1932  
Through its partners,*

**Mr. Anand,**

Age- 45 years  
Residing at- Kumar Clove, Flat 111  
Near Goodwill society, Aundh 411 007,  
Pune, Maharashtra.

**Mr. Bhagat,**

Age- 44 years,  
Residing at- Sindh Society, House Number 09,  
Aundh 411 007, Pune, Maharashtra.

...Claimant No.1

**2. Phoenix Super Speciality Hospital**

*A registered company,  
Under the Companies Act, 2013  
Through its director*

**Dr. Sharma,**

Age- 52 years,  
Residing at- Ajmera Aria, Flat Number 06,  
Koregaon Park 411 001, Maharashtra.

...Claimant No.2

...(Claimants)

Versus

**Mr. Chaudhari,**

Age- 43 years,  
Residing at Cosmos Regency, Flat Number 08,  
Baner 411 045, Pune, Maharashtra

...Opponent

**STATEMENT OF DEFENCE** on behalf of the Opponent is most respectfully submitted as  
under:

1. That contents of paragraph number 01 of the statement of claim are correct facts and the same are admitted by the Opponent.

2. That contents of paragraph number 02 of the statement of claim are correct facts with respect to the partnership deed and the same are admitted by the Opponent.
3. That contents of paragraph number 03 of the statement of claim are correct facts with respect to the business of the firm and the same are admitted by the Opponent.
4. That contents of paragraph number 04 of the statement of claim are correct facts with respect to 'Hospital Institution, Operation and Management Agreement' and the same are admitted by the Opponent.
5. That contents of paragraph number 05 of the statement of claim are correct facts with respect to 'Hospital Institution, Operation and Management Agreement' are correct and the same are admitted by the Opponent. However, the allegations with respect to gross violations and financial irregularities as alleged by the Claimants against this Opponent are strongly denied.
6. That contents of paragraph number 06 of the statement of claim are incorrect facts and the same are denied by the Opponent. This Opponent further states that since the demand of the business required more attention and dedication, the Opponent was occupied with the admitted fact which was very well known to the Claimants. Hence, the Opponent denies the allegations as alleged by the Claimant.
7. That contents of paragraph number 07 of the statement of claim are distorted and incorrect facts with respect to audit report made by tax and audit firm PWC and the same are strongly denied by the Opponent. This Arbitrator may take a note that PWC has corrupt record of audit and tax compliance as with respect to famous Satyam Scandal. Hence, the said report cannot be relied upon.
8. That contents of paragraph number 08 of the statement of claim and the allegations mentioned are distorted facts with respect to correspondences and exchange etc. Hence, the same are being incorrect facts are denied by the Opponent. The Opponent has provided his 100% the said firm and the company. The Claimants have enjoyed all the profits, surplus and benefits of the investment made by the Firm. However, the Claimants hand in glove are now denying the rights of the Opponent and asserting allegations of financial error and manipulations against the Opponent which are strongly denied by the Opponent.
9. That contents of paragraph number 09 of the statement of claim are false facts and the same are denied by the Opponent. This Opponent states that, the Opponent has invested his personal funds and is into loss. The Opponent has to declared himself as insolvent. Along with, if the Hon'ble Tribunal seeks to reply on the audit report mad by PWC, this arbitral proceeding before this Hon'ble Tribunal stands non-est on the grounds of lack of

jurisdiction as the jurisdiction now goes to the National Company Law Tribunal after the enacted of the Insolvency and Bankruptcy Code, 2016.

10. That contents of paragraph number 10 of the statement of claim with respect to notice reply are correct and the same are admitted by the Opponent. However, the suggestion that the Opponent gave mere reply without any explanation are incorrect facts before this Arbitral Tribunal.
11. That contents of paragraph number 11 of the statement of claim are false, fabricated and incorrect facts before this tribunal and the same are strongly opposed by the Opponent.
12. That contents of paragraph number 12 of the statement of claim does not arise since there is no cause of action against the Opponent.
13. This Hon'ble Tribunal may reject the statements of claim since there are no cause of action against the Opponent.
14. That contents of paragraph number 13-15 are mere legal pleadings by the Claimants without any substance. Hence, this tribunal may reject the statement of claim which have been made on the basis of concocted facts.
15. The prayers sought by the Claimants in paragraph number 16a re untenable and the same may be rejected.
16. Therefore, it is prayed before this Hon'ble Arbitrator that:
  - A. The statement of claim filed by the Claimants may be rejected.
  - B. The proceedings to declared as non-est on lack of jurisdiction
  - C. The Claimants may be directed to pay entire cost of the arbitral proceedings.
  - D. The interim award as requested by the Claimant may be rejected.
  - E. The Opponent may be allowed to amend, alter or modify the present statement of defence with leave of this Tribunal.
  - F. Any other order as this Hon'ble Arbitrator deems fit may pass in the interest of justice.

Pune.

Dated: 03/03/2022

Opponent

Advocate for the Opponent

### **VERIFICATION**

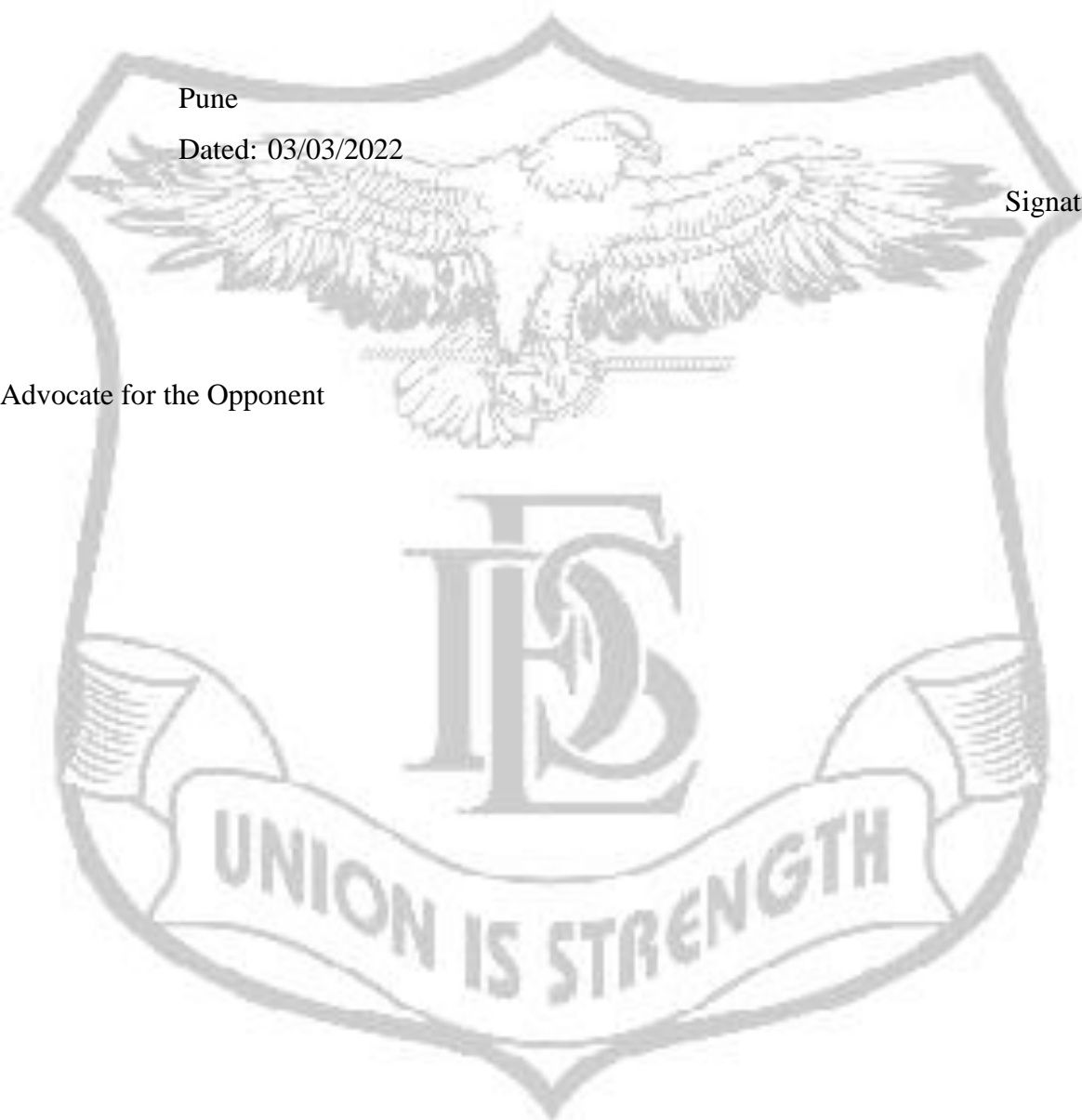
I, Mr. Chaudhari, the Opponent in the present arbitral proceedings state on solemn affirmation that the contents of paragraphs 1-15 in the statement of defence are true and correct facts and prayers sought in paragraph 16 are as per the legal advice.

Pune

Dated: 03/03/2022

Signature

Advocate for the Opponent



**ARBITRAL AWARD**

Arbitration Case Number 01/2022

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In the Matter of the Arbitration Between:

Phoenix Hospitalities, Mr. Anand, Mr. Bhagat, Mr. Sharma (Claimant) vs. Mr. Chaudhari (Opponent)

Arbitral Tribunal: G. Bapat

Seat: Kharadi, Pune.

---

Date: 31/11/2022

Nature of the Dispute: Recovery of Money

**1. Phoenix Hospitalities**

*A registered partnership firm,  
Under the Partnership Act, 1932  
Through its partners,*

**Mr. Anand,**

Age- 45 years  
Residing at- Kumar Clove, Flat 111  
Near Goodwill society, Aundh 411 007,  
Pune, Maharashtra.

**Mr. Bhagat,**

Age- 44 years,  
Residing at- Sindh Society, House Number 09,  
Aundh 411 007, Pune, Maharashtra.

...Claimant No.1

**2. Phoenix Super Speciality Hospital**

*A registered company,  
Under the Companies Act, 2013  
Through its director*

**Dr. Sharma,**

Age- 52 years,  
Residing at- Ajmera Aria, Flat Number 06,  
Koregaon Park 411 001, Maharashtra.

...Claimant No.2

hereinafter referred to as "Claimants": Advocate Claimants, Mr. \_\_\_\_\_

Versus

**Mr. Chaudhari,**

Age- 43 years,  
Residing at Cosmos Regency, Flat Number 08,  
Baner 411 045, Pune, Maharashtra

...Opponent

hereinafter referred to as "Opponent": Advocate for Opponent, Mr. \_\_\_\_\_.

### **CASE INFORMATION**

Statement of Claim filed on or about: 15/03/2022

Statement of Defence filed on or about: 20/03/2022

### **CASE SUMMARY**

Claimant has asserted the following causes of action: misconduct and misappropriation of funds.

Unless specifically admitted in its Answer, Opponent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested recovery of money of Rs. Rs. 3,00,00,000/- to the claimant No.1, Rs. 5,00,00,000/- to the claimant No.2. and compensatory damages by interest at the rate of 12% per annum to each claimant from the April 2020 till final realisation of amounts as prayed in prayer 16) A. and 16) B., of the Statement of Claim to the claimants. restrained in participating into the affairs of the firm and the company. The claimants have also requested for the Opponent to step down from the position of partner in Phoenix Hospitalities and Director in Phoenix Hospitals, costs of this suit, and any other relief that is just, fair and equitable.

In the Statement of Defence, Opponent requested dismissal of the Statement of Claim in its entirety, declaration of the proceedings to be non-est for lack of jurisdiction that the cost of this proceeding, including attorneys' fees, be assessed against Claimant.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitral Tribunal acknowledges that they have read the pleadings and other materials filed by the parties. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as

follows:

1. The statement of claim is allowed.
2. Opponent is liable for and shall pay to Claimant 1 the claim amount of Rs. Rs. 3,00,00,000/- to the claimant No.1.
3. Opponent is liable for and shall pay to Claimant the claim amount of Rs. 5,00,00,000/- to the claimant No.2.
4. Opponent is liable for and shall pay to Claimant interest at the rate of 12% per annum from the April 2020 till final realisation of amounts to each claimant.
5. Cost of the present arbitral proceedings Rs, 10,00,000/-.
6. Any and all relief not specifically addressed herein, including punitive damages, is denied. The above award to be treated as a decree and shall be executed accordingly.

(G. Bapat)

Sole Arbitrator

To, **1. Phoenix Hospitalities**

**Mr. Anand,**

Age- 45 years

Residing at- Kumar Clove, Flat 111

Near Goodwill society, Aundh 411 007,  
Pune, Maharashtra.

**Mr. Bhagat,**

Age- 44 years,

Residing at- Sindh Society, House Number 09,  
Aundh 411 007, Pune, Maharashtra.

**Phoenix Super Speciality Hospital**

*A registered company,*

*Under the Companies Act, 2013*

Through its director

**Dr. Sharma,**

Age- 52 years,

Residing at- Ajmera Aria, Flat Number 06,  
Koregaon Park 411 001, Maharashtra.

**2.Mr. Chaudhari,**

Age- 43 years,

Residing at Cosmos Regency, Flat Number 08,  
Baner 411 045, Pune, Maharashtra

**IN THE COURT OF HON'BLE DISTRICT JUDGE PUNE,**

**AT PUNE**

**ARBITRATION PETITION NO: 522/2022**

In the matter of

Mr. Chaudhari,  
Age- 43 years,  
Residing at Cosmos Regency, Flat Number 08,  
Baner 411 045, Pune, Maharashtra

...PETITIONER

v/s

1. Phoenix Hospitalities  
*A registered partnership firm,  
Under the Partnership Act, 1932*

Through its partners,

Mr. Anand,

Age- 45 years

Residing at- Kumar Clove, Flat 111

Near Goodwill society, Aundh 411 007,

Pune, Maharashtra.

Mr. Bhagat,

Age- 44 years,

Residing at- Sindh Society, House Number 09,

Aundh 411 007, Pune, Maharashtra.

...RESPONDENT 1

2. Phoenix Super Speciality Hospital

*A registered company,*

*Under the Companies Act, 2013*

Through its director

Dr. Sharma,

Age- 52 years,

Residing at- Ajmera Aria, Flat Number 06,

Koregaon Park 411 001, Maharashtra.

...RESPONDENT 2

..RESPONDENTS

Applicant under Section 34 of  
Arbitration and Conciliation Act, 1996

**MOST RESPECTFULLY SHOWETH:**

The Petitioner herein a partner in the Respondent 1 partnership firm registered under the provisions of the Indian Partnership Act, 1932 and is designated as the Chief Finance Officer in the same partnership firm

The Petitioner herein a director in the Respondent 2 Company registered under the provisions of the Companies Act, 2013 and is designated at the Chief Administrative Officer, Chief Marketing Officer, Chief Finance Officer in the same company.

The Petitioner by way of this petition seeks to challenge the Arbitral Award passed by the Arbitral Tribunal dated 31<sup>st</sup> November 2022, (hereinafter referred to as the impugned award) passed by the Ld. Arbitrator G. Bapat in Arbitration Petition 01/2022 passed in favour of the Respondents.

**Brief Facts Leading Present Petition:**

- 1) The Petitioner herein was the Chief Finance Officer of Phoenix Hospitalities as well as Chief Administrative Officer, Chief Marketing Officer and Chief Finance Officer of Phoenix Super Specialty Hospital. Thus, the Petitioner had the right and authority to invest the funds since he has been assigned with the responsibility through the designation. The funds invested from both the accounts and the relevant profits earned were deposited in the respective accounts of partners and directors in the year 2020.
- 2) In year 2021, the Petitioner invested the funds lawfully in a pharmaceutical company named Sigma Pvt. Ltd. Which lost its License due in September 2021. The invested funds were lost in compensating affected people. This unforeseen incidence was and is beyond the Petitioner's control. This led to a loss of funds not only to the Petitioner but also to other investors of the said pharmaceutical company. The Petitioner had also invested Rs. 2,00,00,000/- personally and has lost the same making him insolvent. He declared himself insolvent on 17/05/2023 which is during the continuation of the arbitral proceedings.

**Grounds:**

1. The impugned award is an error apparent on the face of record and thus ought to be set aside;
2. The impugned award is against the facts of the matter and is passed without appreciating the relevant records;
3. The impugned award is prima facie perverse and is contrary to the provisions of law applicable to Arbitral Proceedings.
4. The incapacity of the Petitioner had come to knowledge during the arbitral proceedings. The Ld. Arbitrator ought to have considered this material fact to pass an order in favour of Respondent 1 and Respondent 2. The Arbitral Proceedings are

violative of the provisions U/S 41 of the Arbitration and Conciliation Act, 1996 as the jurisdiction of the case lies to National Company Law Tribunal and ruled on its own jurisdiction.

5. The Ld. Arbitrator has wrongly carried on the proceedings by wilfully avoiding the perusal of the vexatious claims made by the Respondents in the Statement of Claims rendering its award as unlawful.
6. The Ld. Arbitrator ought to have considered the records of books of account of the Petitioner and the Respondents prior to commencing with the proceedings passing before passing the impugned award.
7. Save and except the present petition, the petitioner has not filed any other Petition in this Hon'ble Court or the Hon'ble Supreme Court and in any other Court in respect of the reliefs sought herein.
8. The Appellant craves leave of this Hon'ble court to add/alter/amend/delete/substitute the grounds if and as and when necessary.

**THE PETITIONER THEREFORE MOST HUMBLY PRAYS:**

- a) That this Hon'ble Court be pleased to set aside the award passed by the Ld. Arbitrator G. Bapat in the Arbitration Case Number 01/2022.
- b) That new arbitral proceedings made be ordered.
- c) That a new Sole Arbitrator be appointed for the Arbitral Proceedings.
- d) That cost of the petition be provided for.
- e) That such further and other reliefs be granted as may be deemed fit and proper in the nature and circumstance of the present case.

Date: 01/12/2022

Place: Pune

Advocate for the Petitioner

Petitioner

Mr. Chaudhari,  
Age: 43 Years, Occupation: Business  
R/at: 08, Cosmos Regency, Baner,  
Pune, Maharashtra 411045

## VERIFICATION

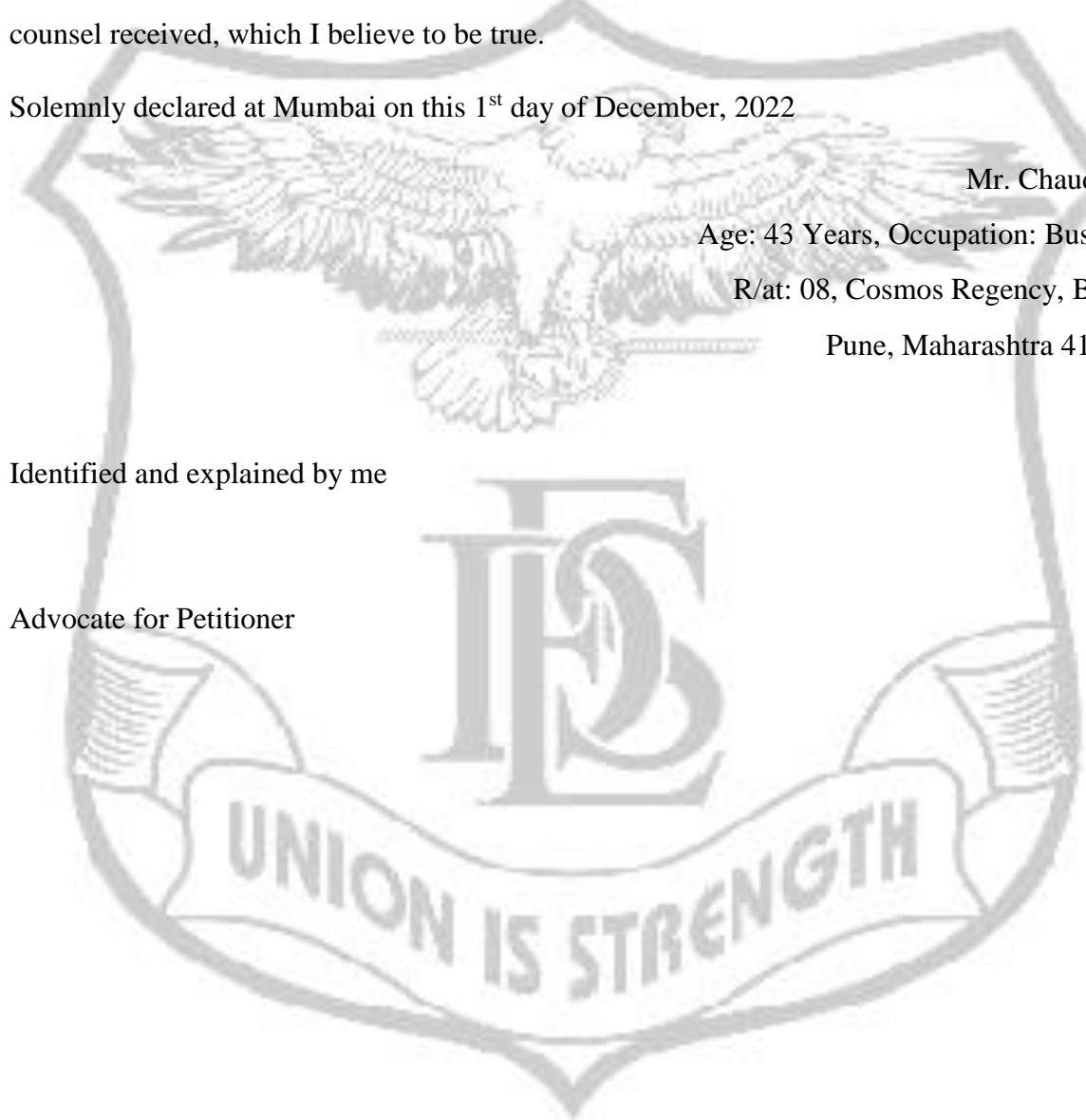
Mr. Chaudhari, Age: 43 Years, Occupation: Business R/at: 08, Cosmos Regency, Baner, Pune, Maharashtra 411045 do hereby solemnly declare that whatever is stated in paragraphs 1 to 8 in the above Writ Petition is true to my own knowledge, information and belief and whatever is stated in the grounds of challenge and the prayer clauses is based on information and legal counsel received, which I believe to be true.

Solemnly declared at Mumbai on this 1<sup>st</sup> day of December, 2022

Mr. Chaudhari,  
Age: 43 Years, Occupation: Business  
R/at: 08, Cosmos Regency, Baner,  
Pune, Maharashtra 411045

Identified and explained by me

Advocate for Petitioner



**IN THE COURT OF HON'BLE DISTRICT JUDGE PUNE,**

**AT PUNE**

**ARBITRATION PETITION NO: 522/2022**

In the matter of

Mr. Chaudhari,  
Age- 43 years,  
Residing at Cosmos Regency, Flat Number 08,  
Baner 411 045, Pune, Maharashtra

....PETITIONER

v/s

3. Phoenix Hospitalities  
*A registered partnership firm,  
Under the Partnership Act, 1932*

Through its partners,

Mr. Anand,

Age- 45 years

Residing at- Kumar Clove, Flat 111

Near Goodwill society, Aundh 411 007,

Pune, Maharashtra.

Mr. Bhagat,

Age- 44 years,

Residing at- Sindh Society, House Number 09,

Aundh 411 007, Pune, Maharashtra.

...RESPONDENT 1

4. Phoenix Super Speciality Hospital

*A registered company,*

*Under the Companies Act, 2013*

Through its director

Dr. Sharma,

Age- 52 years,

Residing at- Ajmera Aria, Flat Number 06,

Koregaon Park 411 001, Maharashtra.

...RESPONDENT 2

..RESPONDENTS

Applicant under Section 34 of  
Arbitration and Conciliation Act, 1996

**SAY TO PETITION**

**MOST RESPECTFULLY SHOWETH:**

The Respondents herein most humbly submit that the Petitioner is made under frivolous and vexatious grounds and needs to be dismissed with immediate effect. The Respondents state that the Petitioner has not complied by the law. The Petitioner has filed in petition before the Hon'ble Court without due notice to the Respondent has mentioned in Section 34(5) of the Arbitration and Conciliation act, 1996. The Petition is non-est and the Respondents plead for the dismissal of this petition

Without any prejudice to anything mentioned hereinafter, the Respondents deny all the grounds of the appeal unless expressly stated otherwise.

The Para wise reply on the grounds upon which the appeal made by the Appellant is as under:

The Respondents most humbly submit,

- 1) That, the contents of Para 1 that the petitioner was the Chief Financing Officer are factual information and hence are not disputed by the respondents. However, the statement that he had the right and authority to invest it is falsely stated. The Petitioner should have consulted with the firm's other partners as well as Dr. Sharma before investing any amount. However, the petitioner failed to inform about the investment thereby failing in his duty. Thus, the loss has occurred solely because of this misappropriation and hence needs to be rectified by the petitioner himself as rightly adjudged by the Ld. Arbitrator as well.
- 2) That, the contents of Para 2 which state that investments were made lawfully is false. No intimation whatsoever was given to any partner regarding any investment. Hence the same cannot be called lawful. The rest of the contentions under Para 2 are not challenged by the respondents.
- 3) That, the Ld. Arbitrator has passed the award after following due procedure. Thus the same cannot be recorded as an error. The Respondents challenge the said ground and invite the appellant to strictly prove the same.
- 4) That, the Ld. Arbitrator has passed the award after due consideration of all the facts and circumstances of the matter and is in no sense unlawful. The Respondents deny the ground in toto.
- 5) That, it is a trite position of law that arbitration proceedings can continue if a party becomes insolvent after the commencement of the proceedings. The Appellant was

declared to be insolvent after the arbitration proceeding had commenced and not prior to it. Thus, the said ground is fixatious and is denied by the respondents.

- 6) That, the contentions under para 4 of grounds are not entirely true. The Respondents had discovered that the appellant had become insolvent and under S.41(2) of the Arbitration and conciliation Act, 1996, the arbitration proceedings can continue if any party is declared insolvent post commencement of proceeding. Hence the ground is denied in toto.
- 7) That, the Ld. arbitrator has passed the award after due consideration of all the facts, circumstances and events and has carried on the proceeding as per The Rules and Regulations. Thus, the same cannot be termed as unlawful. Thus, the ground is denied in toto.
- 8) That, as a matter of fact, the Ld. Arbitrator has resorted to the books of accounts and only after due perusal of the same, has passed an award. The Books of record clearly show the outgoing transactions of Rs. 2 Crore and Rs. 3 Crore respectively which were unlawful. The same is acknowledged by the Ld. Arbitrator in his award. Thus the ground is denied in toto.
- 9) That, the appeal made by the appellant before this Hon'ble Court is just a tactic of delaying justice and prolonging the execution of the Arbitration Award on behalf of the Appellant. Thus, the appeal needs to be dismissed.  
Moreover, the appellant did not serve a notice upon the respondents herein regarding the filing of this present appeal which in itself violates the proceedings.
- 10) The respondents herein most humbly pray,
  - a) That, the Hon'ble Court may please dismiss the appeal with immediate effect for non-compliance to procedure established by law
  - b) That, the arbitral award may kindly be ordered to be executed by the appellant herein by the Hon'ble Court.
  - c) That, the respondents may please be awarded the cost of the present appeal.
  - d) That, any other order in the right interest and justice may please be passed by the Hon'ble Court.

Date: 21/12/2022

Place: Pune

Advocate for Respondents

Respondent

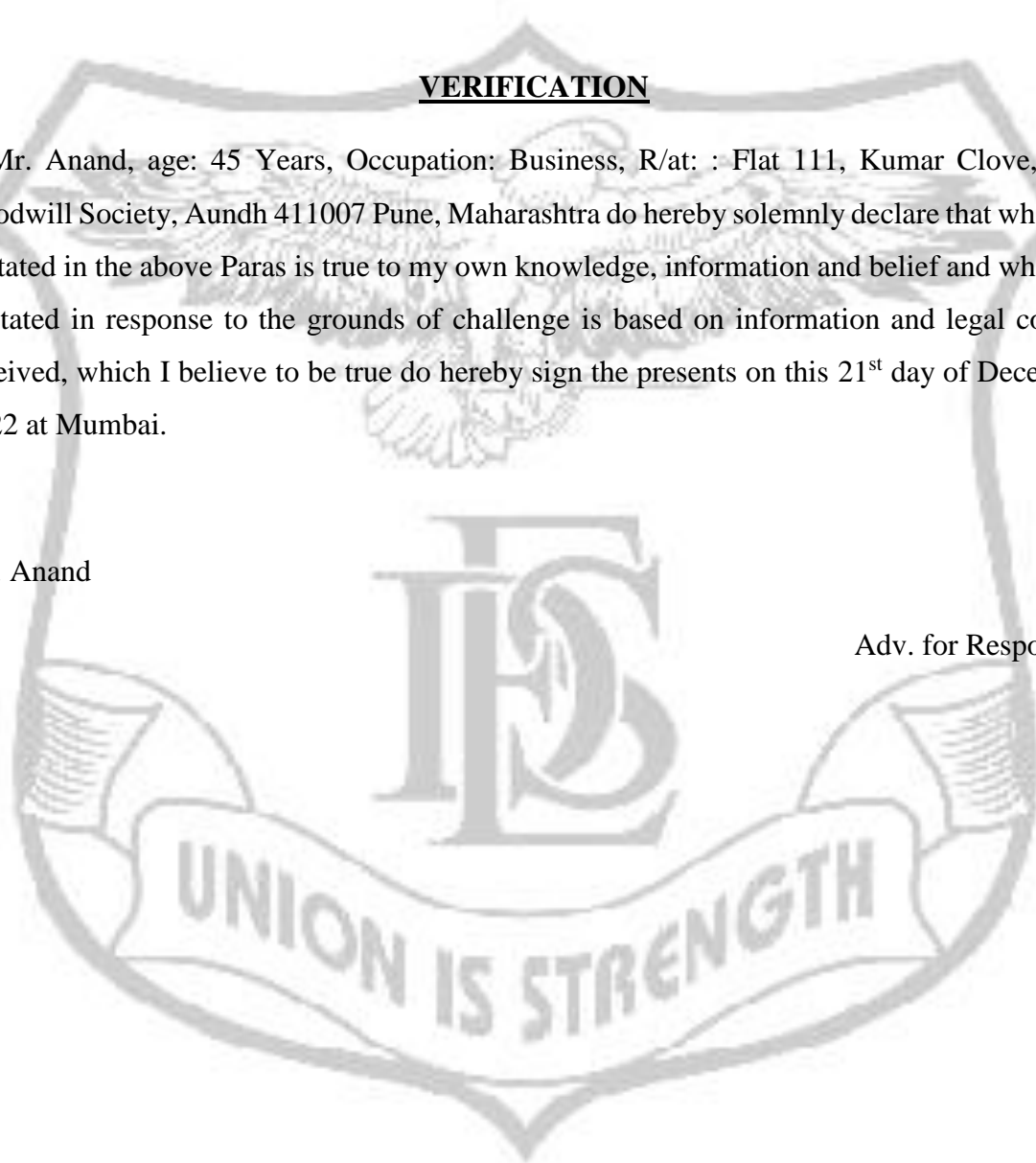
Phoenix Hospitalities  
through its partner,  
Mr. Anand

**VERIFICATION**

I, Mr. Anand, age: 45 Years, Occupation: Business, R/at: : Flat 111, Kumar Clove, Near Goodwill Society, Aundh 411007 Pune, Maharashtra do hereby solemnly declare that whatever is stated in the above Paras is true to my own knowledge, information and belief and whatever is stated in response to the grounds of challenge is based on information and legal counsel received, which I believe to be true do hereby sign the presents on this 21<sup>st</sup> day of December, 2022 at Mumbai.

Mr. Anand

Adv. for Respondent



**ORDER PASSED BY HON'BLE DISTRICT COURT, PUNE**

**IN THE COURT OF HON'BLE DISTRICT JUDGE PUNE,**

**AT PUNE**

**ARBITRATION PETITION NO. 522 OF 2022**

In the matter of

Mr. Chaudhari,  
Age- 43 years,  
Residing at Cosmos Regency, Flat Number 08,  
Baner 411 045, Pune, Maharashtra

....PETITIONER

v/s

5. Phoenix Hospitalities  
*A registered partnership firm,  
Under the Partnership Act, 1932*

Through its partners,

Mr. Anand,

Age- 45 years

Residing at- Kumar Clove, Flat 111

Near Goodwill society, Aundh 411 007,

Pune, Maharashtra.

Mr. Bhagat,

Age- 44 years,

Residing at- Sindh Society, House Number 09,

Aundh 411 007, Pune, Maharashtra.

...RESPONDENT 1

6. Phoenix Super Speciality Hospital

*A registered company,*

*Under the Companies Act, 2013*

Through its director

Dr. Sharma,

Age- 52 years,

Residing at- Ajmera Aria, Flat Number 06,

Koregaon Park 411 001, Maharashtra.

...RESPONDENT 2

..RESPONDENTS

CORAM: S.R. GUPTA, J

DATE : 1<sup>ST</sup> JANUARY 2023

## **ORDER**

After the matter is heard fully, learned Counsel of both parties inform the court that this court may, on the basis of the record placed before it, determined the validity of the arbitral award passed by the arbitral tribunal in the arbitration matter number 01/2022 in favour of the Respondents and has read the award before the court. Considering the materials placed before the court, the impugned award passed is favour of the Respondents passes the validity test based on the provisions of law in the Arbitration and Conciliation Act, 1996. This court states that this petition is non maintainable due non-compliance of procedure laid down under Section 34(5) of the Arbitration and Conciliation Act, 1996. order the execution of the impugned award dated 31<sup>st</sup> November 2022. The arbitration petition is disposed of in the above terms.

S. R. GUPTA, J

