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HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Application No. 53 of 2016**

1. Virendra Kumar Agrawal S/o Late Shri Ram Narayan Agrawal, Aged about 72 years, R/o Opp. Parul Apartment, Behind Shiv Mandir, Vidya Nagar, Bilaspur, PS Tarbahar, District Bilaspur, Chhattisgarh.
2. Akash Agrawal S/o Shri Uttam Kumar Agrawal, aged about 49 years, R/o Near Parul Apartment, Behind Shiv Mandir, Vidya Nagar, Bilaspur, PS Tarbahar, District Bilaspur, Chhattisgarh
3. Smt. Shweta Agrawal W/o Shri Ashish Kumar Agrawal, aged about 36 years, R/o Opp. Parul Apartment, Behind Shiv Mandir, Vidya Nagar, Bilaspur, PS Tarbahar, District Bilaspur, Chhattisgarh.
4. Vishesh Education Trust, Through its Trustee Shri Ashish Kumar Agrawal S/o Shri Virendra Kumar Agrawal, aged about 40 years, R/o Opp. Parul Apartment, Behind Shiv Mandir, Vidya Nagar, Bilaspur, PS. Tarbahar, District Bilaspur, Chhattisgarh.

----Applicants**Versus**

1. National Spot Exchange Ltd (NSEL) FT Tower, CTS No. 256 & 257, 4th Floor, Suren Road, Chakala, Andheri (East) Mumbai, Maharashtra 400093
2. Securities and Exchange Board of India (SEBI), its Branch Office - 1st Floor, Investment Building, Phase 1, LIC Campus, Pandri, Raipur, Chhattisgarh, 492004
3. M/s. Sushil Global Commodities Private Limited, 12, Homjee Street, Fort, Mumbai Maharashtra 400001

---- Respondents

For Applicants	:	Shri Vipra Sen Agrawal and Shri Vivek Kumar Agrawal, Advocates.
For Respondent No. 1	:	Dr. N.K.Shukla, Senior Advocate with Shri Prateek Sharma, Advocate.
For Respondent No. 2	:	Shri Amrito Das, Advocate.
For Respondent No. 3	:	None.

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

20/01/2017

1. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the Act') for appointment of an Arbitrator.
2. The Applicants alleges that they had jointly invested a sum of Rs. 51,60,048/- with the Respondent No. 3. It is further the case of the Applicants that an agreement was entered in to between the Applicants and the Respondent No. 3-M/s. Sushil Global Commodities Private Limited. Now, the Applicants claim that Respondent No. 3 is neither returning their money nor giving them any benefit as per the terms of the agreement dated 21.08.2012. Therefore, disputes have arisen.
3. The Applicants, in this application has arrayed National Spot Exchange Limited and Securities and Exchange Board of India, as Respondents No. 1 and 2. As far as Respondent No. 1 is concerned, according to the Applicants, Respondent No. 3 was a broker of Respondent No. 1 and therefore, the Respondent No. 1 is liable to pay the damages which may have occurred to the Applicants on account of the acts of Respondent No. 3. As far as Respondent No. 2 is concerned, other than being a controlling body, we see no reason why it has even been arrayed as party.
4. Arbitration agreement has to be by the consent of the parties. The Respondent No. 3 and 1 are separate juristic entities. The arbitration agreement by Respondent No. 3 cannot bind Respondent No. 1. Therefore, the arbitration agreement which was entered into between the Applicants and Respondent No. 3 will only bind them and not others.
5. Therefore, it is directed that all the disputes between the Applicants and Respondent No. 3 arising out of the agreement dated 21.08.2012 are referred for

arbitration to Shri Justice V.K.Shrivastava, a retired Judge of the High Court of Chhattisgarh, residing at Ware House Road, Vidhik Sewa Marg, Bilaspur.

6. The parties are directed to appear before the Arbitrator on 19th March, 2017.
7. Registry is directed to send a copy of this order to Shri Justice V.K.Shrivastava so as to reach within one week from today.
8. This Court has not gone into merits of the dispute. The parties are at liberty to raise all the points before the Arbitrator. In case, the Applicants feel that they are entitled to claim any amount from Respondents No. 1 and 2, they may take appropriate action in accordance with law but cannot invoke the arbitration clause.
9. The arbitration application is accordingly disposed of.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE