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

COMMERCIAL ARBITRATION APPLICATION (L.) NO.106 OF 2019

Cherag Shah ..Applicant
Vs.
Harshawardhan Hanmant Sabale & Ors. ..Respondents

Ms.Gyanika Kochar i/b. Y & A Legal for Applicant.
Mr.Sumant Anchan i/b. Integram Legal for Respondent No.1.

CORAM : G.S. KULKARNI, J.

DATE : 26th MARCH, 2019

P.C.:

Heard learned Counsel for the applicant and learned Counsel for the respondent No.1.

2. This is an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby the applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences which have arisen between the parties in regard to the valuation for investment made by applicant and other investors in a company namely Ogle Technologies Limited. It is not in dispute that there is an arbitration agreement dated 2 July 2018. In clause (1) of the said agreement, the parties have agreed for referring all the disputes and

differences between the parties for adjudication by an arbitral tribunal.

Clauses 1 and 2 of the arbitration agreement read thus:-

“1. The Parties agree that all disputes arising out of valuation for investment made by Mr. Cherag Shah vis-a-vis the investment made by other investors in Ogle Technologies Ltd. are hereby referred to an arbitration panel consisting of Mr. Nimish Pandya, Mr. Maulik Shah and a third arbitrator who shall be mutually appointed by the two arbitrators within 3 (three) days of service of a copy of this Agreement on them for their decision and award.

2. Mr. Cherag Shah hereby waives his right to object the appointment of Mr. Nimish Pandya as one of the arbitrators in the arbitration panel as per Section 12(1)(5) of the Arbitration and Conciliation Act 1996 based on the disclosure made by Mr. Nimish Pandya.”

3. It is also not in dispute that the applicant had invoked the arbitration agreement. Both the parties have nominated their respective arbitrators. However, the arbitrators have immediately resigned and the arbitration itself could not take place. Hence the present application.

4. After the application was heard for sometime, learned Counsel for the parties on instructions are agreeable that although the arbitration clause is a peculiar clause where the arbitral tribunal is specified by the names of the prospective members of the arbitral tribunal, however, in view of the changed circumstances, the parties are agreeable that the disputes and differences be now referred for adjudication by a sole arbitrator.

5. In view of the consensus between the parties that the adjudication of the disputes be undertaken by appointing an arbitral tribunal consisting of a sole arbitrator, the application is required to be disposed of. Hence, the following order:-

ORDER

- (i) Mr. Justice J.P. Devadhar, Former Judge of this Court, is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties as specified in the arbitration agreement dated 2 July 2018;
- (ii) The learned sole prospective arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;
- (iii) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (iv) All contentions of the parties are expressly kept open;
- (v) The application is disposed of in the above terms. No costs.
- (vi) Office to forward a copy of this order to the learned Arbitrator on the following address:

address: (i) 322, Varma Chambers, Homji Street, Horniman

Circle, Mumbai-400 001.

(ii) Flat No.1203, 12th Floor, Shantikamal, B Wing,

Babasaheb Ambedkar Marg, Chinchpokli (E.),

Mumbai – 400 012.

[G.S. KULKARNI, J.]