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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION APPLICATION NO. 369 OF 2019**

Iyogi Technical Services Pvt Ltd	...Applicant
<i>Versus</i>	
HDFC Ergo General Insurance	...Respondent

Mr Shekhar Jagtap, *with Charu & Sapna Raskar, for the Applicant.*
Mr Mustafa Doctor, *Senior Advocate, with Sakshi Dube, i/b HK*
Law Associates, for the Respondent.

CORAM: G.S. PATEL, J.
DATED: 6th November 2019

PC:-

1. The claim in this application under Section 11 of the Arbitration and Conciliation Act 1996 is under a professional liability policy issued by the respondent. There is an arbitration clause in the policy itself in clause 23 at page 34. It provides inter alia for a reference to a three-member arbitral tribunal with one arbitrator to be nominated by each side and the two arbitrators so nominated appointing a third, presiding arbitrator. The seat of the arbitration is in Mumbai.

2. The applicants had previously made a claim before the National Consumer Disputes Redressal Commission, New Delhi

(‘NCDRC’). In response to that the present respondent categorically took the point that there exists an arbitration clause requiring invocation.

3. In the course of the day, Mr Jagtap for the applicant took instructions by email from one Mr HR Tamang, Senior Manager of the applicant, said to be the authorized representative of the applicants, through whom the claimant filed the petition before the NCDRC. The instructions are to make a statement to this court that the claimants will withdraw the petition filed before the NCDRC upon these disputes being referred to arbitration. Mr Jagtap fairly accepts that the claimants cannot pursue the same remedy in two different forums. Mr Doctor, equally fairly, only says that the claimants must elect and choose one. Mr Jagtap’s instructions are to proceed with the present application and hence the statement committing to a withdrawal of the NCDRC petition. The reason this statement has become necessary is because there is some logistical difficulty in making an immediate application before that tribunal for withdrawal of the claim.

4. Mr Jagtap, however, submits that the withdrawal of the claim should not prejudice the claimants in their claim before the arbitral tribunal. This goes without saying as there has been no adjudication on merits at all. Mr Doctor for the respondents on his part readily agrees that the respondents will not contend before the arbitral tribunal that any portion of the claimant’s claim before the arbitral tribunal is deemed to have been waived or given up on account of

the withdrawal of the proceedings before the NCDRC. All these statements are accepted.

5. Both sides agree that their disputes arising from this policy agreement must, therefore, be referred to arbitration. Names have been suggested by both sides. Mr Jagtap points out that in a notice preceding the application, the applicants had nominated a former Judge of the Supreme Court. He has, however, given me a list of six names. There are two names suggested by Mr Doctor for the respondents. Both sides have left to finalize the names.

6. Consequently, I will accept the name of Hon'ble Mr Justice RM Lodha, former Chief Justice of India as a nominee arbitrator on behalf of the claimants, and Hon'ble Mr Justice Dipak Misra, former Chief Justice of India, as a nominee arbitrator on behalf of the respondents. Undoubtedly, the two learned Judges will nominate a presiding arbitrator of their choice.

7. I make no directions in regard to the arbitral proceedings save and except to request that the necessary statements of disclosure (being statutorily mandated) should be transmitted to the Prothonotary and Senior Master of this Court. He will retain these on the file on this application. Copies will be given to both sides.

8. The arbitration application is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)