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

COMMERCIAL ARBITRATION APPLICATION NO.394 OF 2018

HDFC Bank Limited	...	Applicant.
V/s.		
Prem Somani Share Brokers Pvt. Ltd		
and anr	...	Respondents

Ms. Bindi Dave, a/w Raghav Gupta, M/s Ankita Sangwan
i/by Wadia Ghandy & Co., for the applicant..
Ms. Pratiksha Agrawal, for respondent No.1.
Mr. Ankit Lohia a/w Yash Mehta i/by Dua Associates, for
respondent No.2.

CORAM : G. S. KULKARNI, J.

DATE : 10th APRIL, 2019.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel
for the respondents.

2] This application is filed under Section 11 of the Arbitration and
Conciliation Act, 1996 (for short, "ACA"), whereby the applicant prays for
arbitral tribunal to adjudicate the disputes between the parties which are
stated to have arisen under the tripartite agreement dated 12.01.2017.

3] Clause 14 of the agreement contains arbitration clause and
provides for referring the dispute to arbitral tribunal, which reads thus :-

"14. Dispute Resolutions and Jurisdiction :

Any dispute, difference, controversy or claim arising between any of the parties:

- a) as to the construction of this Agreement; or
- b) the rights or obligations of a party under this Agreement; or
- c) any other matter arising out of or under or relating to this Agreement,

(other than those which are subject to NSE/NSCCL Bye-laws, Rules and Regulations and governed by the arbitration provided for thereunder) which the parties are unable to resolve amicably, agree to refer the dispute to the arbitration by a sole arbitrator to be appointed mutually by the parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The venue for arbitration shall be Mumbai. The arbitration proceedings shall be conducted in the English language. The arbitration award made, including any award relating to costs, shall be final and binding on the parties. The arbitrator's award shall be in writing and shall be a reasoned award.

The parties thereto agree that they shall prefer all the applications, petitions under the Arbitration and Conciliation Act, 1996, only to the High Court of Judicature at Bombay or to any other Court in Mumbai having competent jurisdiction, as the case may be.

3] The correspondence as annexed to the application even indicate that the applicant had invoked arbitral agreement and sought appointment of the arbitral tribunal.

4] After this application was heard for some time learned counsel for the respondent, on instructions, submit that respondent is agreeable that

the disputes and differences arisen between the parties be referred to the arbitrator.

5] Learned counsel for the respondent, however, states that all the rights and contentions of the respondent, on the question of jurisdiction be left open.

6] In view of the consensus between the parties, application is required to be disposed of, by following order.

Order

i] Mr Cyrus Ardeshir, Advocate, is appointed as the prospective Arbitrator to adjudicate the disputes and differences between the parties, arising under the tripartite agreement dated 12th January, 2017.

ii] The prospective sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the provisions 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 at a date and time as may be fixed by the prospective arbitrator.

iv) The learned prospective arbitrator shall endeavour to publish an award as expeditiously as possible and within the time limit as

prescribed under Section 29-A of the Act;

iv) All contentions of the parties are expressly kept open.

(vi) The Arbitration petition is disposed of in the above terms. No costs.

3. Office to forward a copy of this order to the learned Arbitrator on the following address:-

2nd floor, Vardhaman Chamber,
Cawasji Patel Street, Fort, Mumbai.

[G. S. KULKARNI, J]