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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM ARBITRATION APPLICATION NO. 44 OF 2021**

Edelweiss Custodial Services Limited ... Applicant
Versus
Indianivesh Shares And Securities Private ... Respondents
Limited And Anr

Mr Janak Dwarkadas, Senior Advocate, with Ankit Lohia, Sachin Chandarana and Rashid Boatwalla, i/b M/s Manilal Kher Ambalal & Co, for the Applicant.

Mr Saket M, with Radhika Kulkarni, i/b Vidhi Partners, for Respondent No.1.

Mr Sairam Subramanian, i/b M/s Shardul Amarchand Mangaldas & Co, for Respondent No.2.

**CORAM: G.S. PATEL, J
DATED: 12th March 2021**

PC:-

1. The Application is under Section 11 of the Arbitration and Conciliation Act 1996. There is a Tripartite Agreement dated 22nd April 2019. Clause 14 contains an Arbitration Provision. This contemplates a reference of all disputes and controversies including as to construction of the agreement or the rights and obligations of the parties to a sole arbitrator. The venue of the arbitration is to be in Mumbai.

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Date:
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2. I will take the liberty of nominating an arbitrator since parties are unable to agree, but also take the precaution of specifying an alternate should the first nominated arbitrator, for any reason, be unable to take up the reference to his arbitration.

3. Consequently, the disputes and differences under this Agreement are to be referred to the sole arbitration of the Hon'ble Mr Justice SJ Vazifdar, former Chief Justice of Punjab and Haryana High Court and former Judge of this Court and, failing him, to the Hon'ble Mr Justice MS Sanklecha, former Judge of this Court.

TERMS OF APPOINTMENT

- (a) **Appointment of Arbitrator:** The Hon'ble Mr Justice SJ Vazifdar, former Chief Justice of Punjab and Haryana High Court and former Judge of this Court, and, failing him, the Hon'ble Mr Justice MS Sanklecha, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under the Tripartite Agreement dated 22nd April 2019.
- (b) **Communication to Arbitrator of this order:**
 - (i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from the date this order is uploaded.
 - (ii) The Advocates for the Applicant will forward an ordinary copy of this order to the learned

Sole Arbitrator at the following postal and email addresses:

Arbitrator **The Hon'ble Mr Justice SJ Vazifdar, former Chief Justice of Punjab and Haryana High Court and former Judge of this Court.**

Address Readymoney Mansion,
Veer Nariman Road,
Mumbai 400 001.

Arbitrator **The Hon'ble Mr Justice Manoj Sanklecha, former Judge of this Court.**

Address 311, Churchgate Chambers,
New Marine Lines,
Churchgate, Mumbai 400 020

Mobile 98200 65338

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Applicant will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.

- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.
- (f) **Section 16 application:** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.
- (g) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.

- (h) **Fees:** The learned Sole Arbitrator's fees shall be in his discretion.
- (i) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (j) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.
- (l) **Procedure:** These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

4. The 2nd Respondent says that there is a clause which says that the 2nd Respondent "need not be joined" to the arbitration. The clause does not say that the 2nd Respondent "must not be joined" to the Arbitration. If the 2nd Respondent seeks to be defenestrated from the arbitral proceeding, it is at liberty to make that application before the Arbitral Tribunal.

5. The Commercial Arbitration Application is disposed of in these terms.

6. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)