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IN THE HIGH COURT OF BOMBAY AT GOA

**APPLICATION FOR APPOINTMENT OF
ARBITRATOR NO. 4 OF 2025**

1. Auduth Timblo,
Son of late Shri. Modu Timblo,
Major in age, businessman,
Residing at La Marvel Colony,
Dona Paula, Goa 403004; 76 years.

2. Prashant Timblo,
Son of Shr. Modu Timblo,
Major in age, businessman,
Residing at “Samudra Darshan”,
Taleigao, Goa 403206.
Represented herein by
his duly constituted attorney,
viz. Applicant No.1
herein (Auduth Timblo).

3. Mormugao Maritima,
A sole proprietorship concern of
Shri Auduth Timblo,
with office at Villa Flores de Silva,
Erasmus Carvalho Street,
Margao-Goa, 403601,
Represented herein by its sole
proprietor, Applicant No.1 herein
(Auduth Timblo).

4. Sociedade De Fomento Industrial Private Limited, a company registered under the Companies Act, 1956, Having its Registered Office at Villa Flores de Silva, Erasmo Carvalho Street, Margao, Goa 403601, Represented herein by its Chairman & Managing Director, Applicant No. 1 herein (Auduth Timblo).

... Applicants

Versus

1. Ravi Kant Jaipuria
(Hindu Undivided Family),
Carrying on business at 8,
Prithviraj Road, New Delhi 110 011
Represented herein by its Karta,
Shri Ravi Kant Jaipuria, major in age;
2. Surya Kant Jaipuria,
Major in age, businessman,
Residing at 8, Prithviraj Road,
New Delhi 110 011.
3. Devyani International Pvt. Ltd.,
A company registered under the
Companies Act, 1956
and having Registered Office at F-2/7,
Okhla Industrial Area,
New Delhi 110 020;

4. S. M. V. Agencies Private Limited,
A company registered under the
Companies Act, 1956 and having its
Registered Office at 1862,
Mahalaxmi Market, Bhagirath Palace,
Chandni Chowk, New Delhi 110 006;

5. Ravi Kant Jaipuria,
Major in age, businessman,
Residing at 8, Prithviraj Road,
New Delhi 110 011.

6. Devyani International Limited,
A company registered under the
Companies Act, 1956 and having its
Registered Office at F-2/7,
Okhla Industrial Area,
New Delhi 110 020.

7. Dilip Timblo,
Son of Late Shri Modu Timblo,
Major in age, residing near "Zaivanti",
Gogol Margao, Goa 403 601.

...Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. Preetam Talaulikar and Ms. Neha Kholkar, Advocates for the Applicants.

Mr. Balkrishna Sardessai with Ms. Vibha Patkar, Advocates for Respondent Nos. 1 to 6.

CORAM : VALMIKI MENEZES, J.

DATED : 8TH JULY, 2025.

ORAL ORDER:

1. Registry to waive objections and register the matter.
2. The above Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) for appointment of the Third Arbitrator as Presiding Arbitrator in terms of Clause (b) of Sub Section 6 of Section 11 of the Act.
3. Under a Share Purchase Agreement dated 14.06.2000 between the parties, Clause 19 constitutes the arbitral clause under which any dispute and differences between the parties would be required to be referred for adjudication by a three-member arbitration board comprised of one member nominated by the Petitioner, one member nominated by the Respondent and one member jointly nominated by the two members so nominated by the parties.
4. Disputes that arose between the parties were referred to arbitration wherein, one of the claims preferred by the Original Claimants was interest payable on the ‘Balance Purchase Price’ (as defined in the Share Purchase Agreement dated 14.06.2000) outstanding from time to time during the period 01.06.2000 till

24.09.2000 payable under Clause 2.1 of the First Supplemental Agreement read with Clause 2 of the Second Supplemental Agreement. This Claim was identified as “Claim No. 1” before the Arbitral Tribunal.

5. Vide award dated 03.03.2015, amongst other claims that were adjudicated, the aforesaid Claim No. 1 was rejected by the Arbitral Tribunal. This rejection was challenged by the Applicants herein before the District Court, Margao, in an Application under Section 34 of the Arbitration Act, which was rejected vide judgment dated 19.11.2018.

6. The Applicants preferred an Appeal under Sub Section 2 of Section 37 of the Arbitration Act challenging the Judgment dated 19.11.2018 before this Court. Vide Judgment dated 03.03.2022, this Court allowed the Appeal, setting aside Award dated 03.03.2015, insofar as it had rejected Claim No. 1. The parties were directed to begin arbitration on Claim No. 1 *de novo*.

7. The Judgment dated 03.03.2022 was challenged by Respondent Nos. 2, 4, 5 and 6 before the Supreme Court in Special Leave Petition No. 11666/2022, which came to be dismissed by Order dated 25.09.2024.

8. During the pendency of the Special Leave Petition, a letter dated 30.03.2023 was addressed by the Applicants to the Respondents intimating them of having nominated Shri. Justice Arvind V. Sawant, Former Chief Justice of Kerala High Court as their nominee arbitrator, further calling upon the Respondents to appoint their nominee Arbitrator. The Respondents, vide letter dated 12.04.2023, contended that they could not proceed with arbitration afresh on Claim No. 1, given that the Special Leave Petition was pending before the Supreme Court.

9. Following the dismissal of the Special Leave Petition, the Applicants addressed a further letter to the Respondents dated 27.01.2025, making a reference to the letter dated 30.03.2023, calling upon the Respondents to appoint their nominee Arbitrator so that the two nominee Arbitrators could appoint a third Arbitrator to adjudicate upon Claim No. 1.

10. The Respondent Nos. 2, 4, 5 and 6, in response to the letter dated 27.01.2025, intimated the Applicants of having nominated Shri Justice Tarun Agarwala, former Chief Justice of Meghalaya of High Court as their nominee Arbitrator, vide letter dated 11.02.2025.

11. Shri Justice Tarun Agarwala unfortunately, passed away on 30.03.2024, upon which, vide letter dated 21.04.2025, the Respondents nominated Shri Justice Vineet Saran, former judge of the Supreme Court as their nominee Arbitrator.

12. Vide email dated 22.04.2025, the Applicants called upon the two nominee Arbitrators to nominate the third Arbitrator. However, the two nominee arbitrators failed to appoint the third Arbitrator within the specified period of thirty days under Sub Clause (b) of Sub Section 6 of Section 11 of the Act.

13. The Applicants have now approached this Court for the appointment of the third Arbitrator/Presiding Arbitrator.

14. In these circumstances, the following order is passed:-

(A) Shri. Justice Uday U. Lalit, former Chief Justice of India, is appointed as the third Arbitrator/Presiding Arbitrator to decide upon Claim No.1 referred to in Judgment dated 03.03.2022 of this Court in AUA No. 15/2019 between the Applicant and the Respondent arising out of and/or in connection with the Share Purchase Agreement dated 14.06.2000.

(B) A copy of this order will be communicated to the third Arbitrator by the Advocate for the Applicant within a period of one week from today.

(C) The learned Third Arbitrator is requested to forward his Statement of Disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Advocate for the Applicant so as to enable him to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent.

(D) The parties shall appear before the Arbitral Tribunal on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(E) Contact and communication particulars shall be provided by both sides to the Arbitral Tribunal within a period of one week from today. This information shall include a valid and functional email

address as well as the mobile numbers of the respective Advocates.

(F) The Third Arbitrator shall charge his fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee payable to Arbitrators) Rules, 2018. All the arbitral costs and the fees of the Third Arbitrator will be borne by the Applicant and the Respondent equally and will be subject to the final Award that may be passed by the Tribunal.

(G) The parties have agreed under Clause 19 of the Share Purchase Agreement that the venue of the arbitration will be in Margao, Goa.

15. The Application is disposed of in the aforesaid terms. There shall be no order as to costs.

16. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by email of a digitally signed copy of this order.

VALMIKI MENEZES, J.