IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 14TH DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

CIVIL MISCELLANEOUS PETITION NO.133 OF 2019

BETWEEN:

JAI PRAKASH MOOLCHANDANI
S/O.DEVI DAS MOOLCHANDANI
AGED ABOUT 51 YEARS
R/O FLAT NO.904, 'B' BLOCK
VASUNDHARA KRITIKA APARTMENTS
NO.75/2, HOSALEREHALLI
100 FEET RING ROAD, BANASHANKARI III STAGE
BENGALURU-560 085. …PETITIONER

(BY SRI.G.S.ARUNA, ADVOCATE FOR
SRI.SHANMUKHAPPA, ADVOCATE)

AND:

1. M/S.IL & FS INVESTSMART SECURITIES LTD.,
"IL & FS FINANCIAL CENTRE"
8TH FLOOR, PLOT C-22, "G-BLOCK"
BANDRA KURLA COMPLEX
BANDRA (EAST), MUMBAI-400 051

NOW KNOWN AS:
HSBC INVESTDIRECT SECURITIES (INDIA) LTD.,
"SHIV BUILDING", 1ST FLOOR
PLOT NO.139, 140B, WESTERN EXPRESS HIGHWAY
SAHAR JUNCTION, VILE PARLE (EAST)
MUMBAI-400 057

2. M/S.ANNAPOORNA STOCK & SHARE
BROKERS PRIVATE LIMITED
"ANDRES CAPITAL"
8/1 ANDREE ROAD, K.H.ROAD CROSS
BENGALURU-560 027

3. NATIONAL STOCK EXCHANGE OF INDIA LIMITED
2ND FLOOR, "ISPAHANI CENTRE"

DOOR NO.123-124, NUNGABAKKAM HIGH ROAD
NUNGAMBAKKAM, CHENNAI-600 034
HAVING REGISTERED OFFICE AT
"EXCHANGE PLAZA", C-1, BLOCK-G
BANDRA KURLA COMPLEX
BANDRA (EAST), MUMBAI-400 051 &
BENGALURU OFFICE AT NO.217, "DBS HOUSE"
26, CUNNINGHAM ROAD, BENGALURU-560 052

4. SECURITIES & EXCHANGE BOARD OF INDIA
'SEBI BHAVAN', PLOT NO.C 4-A
G-BLOCK, BANDRA KURLA COMPLEX
BANDRA (EAST), MUMBAI-400 051 .

…RESPONDENTS

(SRI M.DHYAN CHINNAPPA, SENIOR ADVOCATE FOR
SMT.ANURADHA AGNIHOTRI, ADVOCATE FOR R3
SRI.NITIN PRASAD, ADVOCATE FOR R4,
V/O DATED 25.05.2022, NOTICE TO R1 & R2 ARE HELD SUFFICIENT)

THIS C.M.P. IS FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO APPOINT AN ARBITRATOR FOR ADJUDICATION OF THE DISPUTE RAISED BY THE PARTIES AS PER CLAUSE NO.13 OF THE CLIENT REGISTRATION FORM (RESIDENT INDIVIDUAL) AGREEMENT DATED 22.09.2006 VIDE ANNEXURE-A AND ETC.

THIS C.M.P. COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

In this petition, petitioner seeks appointment of an arbitrator for adjudication of the dispute raised between the parties as per clause No.13 of the Client Registration Form (Resident individual) Agreement dated 22.09.2006 vide Annexure-A and for other reliefs.

2. The material on record discloses that the petitioner is an investor in Shares and Securities and deals in equities and derivative contracts. The 1st respondent is a trading member in both equities and derivative segments of the National Stock Exchange of India Limited (3rd respondent), while 2nd respondent is a sub-broker / franchisee of the 1st respondent in Bangalore. The 4th respondent is the Securities and Exchange Board of India.

3. During 2007-08, the petitioner initiated arbitration proceedings before the sole arbitrator appointed by the 3rd respondent – NSE. The arbitral tribunal passed an award dated 17.07.2009 in arbitration matter (AM) No:F & O / C-0481 / 2008 rejecting the claim of the petitioner. The said arbitral award was challenged by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the said Act of 1996') before the High Court of Madras in O.P.No.586/2009. It is relevant to state that in the said proceedings before the Madras High Court, the 3rd respondent – NSE was not arrayed as a party and it was only the respondents 1 and 2 herein and the sole arbitrator who were arrayed as parties.

4. By final order dated 19.01.2017, the Madras High Court set aside the arbitral award and remanded the matter back to NSE - 3rd respondent herein to constitute an arbitral tribunal and decide the claim and counter claim afresh on merits and in accordance with law. Pursuant thereto, petitioner got issued a Lawyer's notice dated 13.03.2019 nominating a panel of three arbitrators for the freshly reconstituted arbitral tribunal and called upon the 3rd respondent to give consent to the same. While, the respondents 1 and 2 did not send any reply, the 3rd respondent issued a reply dated 26.03.2019 intimating the petitioner that in order to enable the 3rd respondent to proceed further, it is necessary that the petitioner submits an arbitration application in Form - I along with statement of case and supporting documents. A copy of Form –I was attached by the 3rd respondent – NSE along with the reply. In the said reply, 3rd respondent – NSE also informed the petitioner that the appointment of an arbitrator would be done in accordance with the 4th respondent – SEBI's circular dated 18.03.2013 and that the choice of arbitrators provided by the parties are updated in the Centralized

Arbitrator Appointment System (CAAP) and the appointment of arbitrator is done through a computerized automated process, wherein neither the parties to arbitration nor the concerned Exchange will be directly involved.

5. Pursuant to the said reply dated 26.03.2019 issued by the 3rd respondent, petitioner is before this Court seeking appointment of an arbitrator on the ground that the 3rd respondent had failed to comply with the order passed by the Madras High Court and the request made by the petitioner in his notice.

6. Heard learned counsel for the petitioner and learned Senior counsel for 3rd respondent – NSE and learned counsel for 4th respondent and perused the material on record.

The respondents 1 and 2 having been served with notice of this petition, they have chosen unrepresented and have not contested this petition.

7. In addition to reiterating the various contentions urged in the petition and referring to the material on record,

in particular the earlier proceedings, correspondence etc., as well as the SEBI's circular dated 18.03.2013, learned counsel for the petitioner submits that in view of the order of the Madras High Court referred to supra and the undisputed fact the respondents 1 and 2 had not given their consent for the arbitrators nominated by the petitioner in his notice dated 13.03.2019, it was the bounden duty of the 3rd respondent – NSE to appoint the said arbitrators only and not any other person and since the 3rd respondent did not comply with the requests and demands of the petitioner, he is before this Court by way of the present petition.

8. Per contra, learned Senior counsel for the 3rd respondent – NSE in addition to reiterating the various contentions urged in the statement of objections, invites my attention to the letter dated 01.10.2010 and reply dated 26.03.2019 in order to contend that in view of the Bye-laws and Rules of 3rd respondent – NSE as well as its Trading Regulations (Capital Market Segment), in particular, Regulation 5.6 which provides for appointment of arbitrators and also the 4th respondent - SEBI's circular

dated 18.03.2013, it was incumbent upon the petitioner to submit an application in Form – I, pursuant to which, the 3rd respondent – NSE would proceed to constitute an arbitral tribunal in accordance with law. It was submitted that without following the aforesaid mandatory procedure, it was not open for the petitioner to seek appointment of an arbitrator bypassing the said procedure and as such, the petition was liable to be dismissed.

9. I have given my anxious consideration to the rival submissions and perused the material on record.

10. A perusal of the material on record comprising of the earlier proceedings, to which 3rd respondent – NSE was not a party and the SEBI's circular dated 18.03.2013 as well as the Bye-laws, Rules and Regulations of 3rd respondent – NSE, in particular Regulation 5.6 will clearly indicate that the learned Senior counsel for 3rd respondent is correct in his submission that it was essential for the petitioner to submit his application in Form – I to the 3rd respondent so as to enable it to take necessary steps to constitute an arbitral tribunal in accordance with law. So

also, the contention of the petitioner that the 3rd respondent NSE cannot insist upon Form – I being submitted in view of the matter being remanded to NSE by the Madras High Court cannot be accepted in view of the undisputed fact that the 3rd respondent – NSE was not a party to the said proceedings / order. At any rate, in view of the specific stance of the 3rd respondent – NSE that upon the petitioner submitting an application in Form – I along with claims and documents as stated in its reply dated 26.03.2019, the 3rd respondent would proceed further and constitute an arbitral tribunal, I deem it just and appropriate to dispose of this petition by reserving liberty in favour of the petitioner to submit an application in Form – I along with necessary claims, documents etc., to the 3rd respondent, who will consider the same and proceed further to constitute an arbitral tribunal in accordance with law.

11. In the result, I pass the following:

ORDER

(i) Petition is hereby disposed of.

(ii) In continuation of and in addition to the Notice dated 13.03.2019 issued by the petitioner to the respondents, the petitioner is reserved liberty to submit an application in Form - I along with its claim, documents etc., to the 3rd respondent - National Stock Exchange within a period of three weeks from today.

(iii) It is further directed that immediately upon receipt of the aforesaid application in Form – I submitted by the petitioner, 3rd respondent - NSE shall proceed further forthwith and take appropriate steps to constitute the arbitral tribunal in accordance with law.

(iv) Liberty is reserved in favour of the petitioner to seek revival of the present petition, if the occasion so arises.

(v) In view of the disposal of petition, interim application, if any, does not survive for consideration and the same stands dismissed.

Sd/-
JUDGE

Bmc/Srl.