



## 2<sup>ND</sup> RMLNLU - KOCHHAR & CO. ARBITRATION MOOT COURT COMPETITION, 2024

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23<sup>RD</sup> - 25<sup>TH</sup> FEBRUARY, 2024



MOOT PROPOSITION

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**IN THE MATTER OF AN ARBITRATION  
BETWEEN**

**VANDELAY VENTURES PRIVATE LIMITED**

**... CLAIMANT**

**AND**

**KRAMERICA UK SPORTING LIMITED**

**... RESPONDENT NO. 1**

**K2 CAPITAL PRIVATE LIMITED**

**... RESPONDENT NO. 2**

**MOOT PROPOSITION**

**I. INTRODUCTION**

1. The present dispute arises out of a shareholders' agreement<sup>1</sup> dated 1 June 2018 ("Shareholders' Agreement" or "SHA") entered into between Vandelay Ventures Private Limited ("Claimant" or "Vandelay"), Kramerica UK Sporting Limited ("First Respondent" or "Kramerica") and K2 Capital Private Limited ("Second Respondent" or "K2 Capital").
2. Vandelay has referred the matter to arbitration pursuant in accordance with Clause 11 of the SHA.

**II. PARTIES**

3. The Claimant, Vandelay is a company duly organized and existing under the laws of India. Vandelay is a venture capital firm, which specializes in investments in sports teams around the world. The address and contact details of Vandelay are:

Address: 443 Raffles Square, Marina Road, Mumbai 400 020

Email: [contact@vandelay.com](mailto:contact@vandelay.com)

4. The First Respondent, Kramerica is a company duly incorporated and existing under the laws of the United Kingdom. Kramerica owns several football clubs around the world. It reported profits of GBP 103,222,674 reported in 2021 and GBP 108,420,484 in 2022. In India, Kramerica is the majority shareholder of K2 Capital. Prior to the

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<sup>1</sup> Relevant extracts of the SHA, Exhibit – 1.

investment by Vandelay in K2 Capital, Kramerica held 100% of the shareholding in K2 Capital. The address and contact details of Kramerica are:

Address: 220, St. John's Street, Mayfair, London W1J XXY

Email: assist@kramerica.com

5. The Second Respondent, K2 Capital is a company duly incorporated and existing under the laws of India. K2 Capital owns and operates India's biggest football club, United India FC. While K2 Capital has been impleaded as a party respondent, no reliefs have been sought against K2 Capital in the present arbitration. The address and contact details of K2 Capital are:

Address: K2 Tower, 7<sup>th</sup> Floor, Sector 22, Noida, Uttar Pradesh 201 301

Email: k2enquiry@k2capital.com

### **III. RELEVANT AGREEMENT**

6. The parties are governed by the SHA dated 1 June 2018.

### **IV. ARBITRATION AGREEMENT**

7. The arbitration agreement is set out in Clause 11 of the SHA.
8. The SHA also contains a Governing Law and Jurisdiction clause (Clause 15.4), which reads as follows:

*"15.4 Governing Law and Jurisdiction*

*This Agreement shall be governed in all respects by the Applicable Laws of India and, subject to the provisions of Clause 15 (Dispute Resolution), the courts at New Delhi, India shall have exclusive jurisdiction."*

### **V. NATURE AND CIRCUMSTANCES OF THE DISPUTE**

Rise of United India FC

9. K2 Capital is the owner of India's biggest football club, United India FC. Since its formation in the year 2008, United India FC has already won 8 titles in India's premier football league, Football League of India (FLI). While cricket continues to be the most followed sport in India, United India FC's popularity across India and particularly in the eastern region is considered to be at par with some of the biggest cricket clubs in India.



10. The success and popularity of United India FC is credited largely to its Sporting Director, Sir Alex Guardiola. The hiring of Sir Guardiola in the year 2012 was a big scoop for United India FC and a major turning point in the club's history. Experts believe that Sir Guardiola has been able to use his vast experience of managing some of the biggest football clubs in the world to transform United India FC and make it a powerhouse of Indian football. A recent report from a leading national daily in India commented as follows on United India FC:

*“The success of United India FC over the years can be attributed to its dynamic young talent, strategic management, community engagement and most importantly, the genius of Sir Alex Guardiola. With a focus on grassroots development, the club aims to elevate Indian football on the international stage by nurturing homegrown players and fostering a culture of passion for the sport. Keep an eye on their progress as Guardiola looks to make a mark in international competitions.”*

11. Vandelay is a venture capital firm, which specializes in investments in sports teams around the world. Vandelay has investments in some of the biggest football clubs around the world, including in the United Kingdom, Spain and Germany.
12. Vandelay's team of experts keeps a close eye on sporting developments across the world. Impressed by the performance of United India FC in the India's football league, Vandelay decided to invest in the club. For this purpose, Vandelay reached out to K2 Capital, the owners of United India FC.

#### Investment by Vandelay

13. After detailed negotiations, Vandelay and the owners of United India FC reached an agreement. Accordingly, pursuant to a Share Purchase Agreement dated 1 June 2018, Vandelay acquired 50,00,000 shares of K2 Capital, representing 25% of issued, paid up and subscribed share capital of K2 Capital from Kramerica. The balance 75% shareholding continues to be held by Kramerica. It was also agreed that Kramerica would continue to look after the day-to-day football operations of United India FC. The press release from United India FC on this subject read as follows:

*“Vandelay Ventures Makes Strategic Investment in United India Football Club*

*In a groundbreaking move, Vandelay Ventures, a prominent venture capital firm, has picked up a significant stake in United India FC, marking a pivotal moment in the club's trajectory. The investment by Vandelay is expected to propel the club to new heights, both in terms of sporting prowess and organizational development.*

*The investment is not only anticipated to strengthen the team's financial standing but also bring valuable expertise and resources to enhance its overall infrastructure.*

*Club officials and Vandelay Ventures executives expressed mutual enthusiasm about the partnership, emphasizing a shared vision for the future of football in India. The collaboration is poised to accelerate the club's efforts in nurturing local talent, upgrading facilities, and expanding community outreach programs. Mr. TS Sharma, CEO of Vandelay Ventures said that he sees immense potential in United India FC and aims to play a crucial role in the club's growth and success. "We are here because of the faith in the coaching team and will fully back Sir Alex and his colleagues", said Sharma.*

*Football enthusiasts and stakeholders alike are eagerly awaiting the positive impact this strategic alliance will have on United India FC's performance in domestic leagues and potential participation in international competitions. This development signals a promising era for the club and adds a new dimension to the evolving landscape of football investments in the country."*

14. Simultaneously with the execution of the Share Purchase Agreement, Vandelay, Kramera and K2 Capital entered into the SHA dated 1 June 2018, which sets out the terms and conditions of their *inter se* relationship and rights and obligations.
15. Like many others, Vandelay was convinced that the success of United India FC was primarily attributable to its coaching team led by the Sporting Director, Sir Guardiola. Accordingly, amongst other things, a 'put' option was inserted in the SHA (Clause 7.2), which stipulates that in the case of a proposed change of the coaching team of United India FC, Vandelay would have the right (but not the obligation) to sell all (but not less than all) of its shares in K2 Capital to Kramera at a fair market value ("**Fair Market Value**") to be determined by a third-party valuer and in accordance with the procedure set out in the SHA.
16. The procedure for the exercise of the above 'put' option is given at Paragraph 4 of Annexure 1 of the SHA.
17. Under the SHA, the expression "Fair Market Value" is defined to mean the following:

*"Fair Market Value" shall mean the fair market value of the Securities of the Company as determined by any of the Big Four. The valuation shall be determined based on generally accepted international standards for valuation, and the valuer may consider such factors as historic performance, Book Value of Equity, goodwill and the future potential of the Company..."*
18. The club's meteoric rise and newfound ambitions continued to capture the attention of football enthusiasts worldwide. Apart from picking up domestic titles, United India FC put up an extraordinary fight in its recently friendly against 3-times Champions League winners, Manchester Palace FC. The match against Manchester Palace FC ended in a 2-2 draw. This was a historic achievement and a testament to the club's rapid transformation under the guidance of Sir Alex and his team. The club's performance was particularly rewarding for its investors.

Exit of Sir Alex Guardiola

19. In the meantime, around September 2023, unverified reports emerged of a serious rift between Kramerica and Sir Alex over player and staff salaries.
20. After weeks of speculation, it was widely rumoured that Sir Alex and his team could leave the club at the end of the season as part of a broader organizational realignment, intended to optimize the decision-making process and after a comprehensive evaluation of the culture within the club. One media source suggested Sir Alex as saying that he has had “enough” and that the owners cannot prioritise their own interest over the interest of the players.
21. Concerned by the developments and the realistic possibility of Sir Alex leaving the club, Vandelay tried to mediate to resolve the issues between Kramerica and Sir Alex. However, it was increasingly becoming clear that the relationship had broken down to a point of no return.
22. On 12 November 2023, Kramerica informed Vandelay about the departure of Sir Alex Guardiola and his team from the club at the end of the season i.e. around the end of February / mid of March 2023. Kramerica also informed Vandelay that if it wished to exercise the ‘put’ option in terms of Clause 7.2 the SHA, Kramerica was open to discussing any proposal Vandelay may have in this regard.
23. Vandelay replied to Kramerica promptly on 13 November 2023. It was suggested that the parties should appoint an auditor and provide to the auditor all information reasonably required for determining the Fair Market Value. Some relevant excerpts from Vandelay’s letter are reproduced below:

*“We are in receipt of the letter dated November 12, 2023 issued by Kramerica regarding the departure of Sir Alex Guardiola and his team from United India FC.*

*This is an unfortunate development. As you are aware, the primary reason for Vandelay’s investment and faith in United India FC was the leadership and coaching style of Sir Alex Guardiola and his staff. Nevertheless, we note that this announcement constitutes a ‘Change of Coaching Team’ as per Clause 7.2 of the SHA dated 1 June 2018. Accordingly, Vandelay shall have the right (but not the obligation) to sell all (but not less than all) of the securities of K2 Capital held by Vandelay to Kramerica in accordance with the procedure set out in paragraph 4 of Annexure 1 to the SHA....*

*In terms of next steps, we request that the parties schedule a call at the earliest to discuss the appointment of an auditor to determine the Fair Market Value, as required under the SHA....”*



Appointment of auditor and determination of Fair Market Value

24. K2 Capital approached Costanza and Partners Auditing (“**Costanza**”), a ‘Big 6’ accounting firm in India (jointly agreed to by Vandelay and Kramerica) for determining the Fair Market Value. On 29 November 2023, Costanza provided Kramerica and Vandelay with a note setting out the proposed approach for the valuation, a draft engagement letter and a preliminary information checklist. The engagement letter was approved by Kramerica and Vandelay on 10 December 2023 after preliminary discussions with Costanza. K2 Capital, accordingly, instructed Costanza to commence the valuation process.
25. The Costanza engagement letter *inter alia* provides that the scope of Costanza’s services was to “perform a fair market valuation of the equity shares of K2 Capital as at 31 March 2023 (“**Valuation Date**”) based on the latest available balance sheet as at 31 March 2023. The engagement letter further provides that Costanza will rely on “Client information made available to us and, unless we expressly agree otherwise, will have no responsibility to evaluate or verify it” and that Costanza “will not, except to such extent as you request and we agree in writing, seek to verify or be responsible for the accuracy of the data (including facts, estimates, opinions, projections, forecasts or other information), information and explanations or arithmetical accuracy / logical consistency thereof provided by yourselves/, and you are solely responsible for this data, information and explanations”.
26. Costanza started the valuation process and K2 Capital shared information relevant for the purpose of valuation, including the audited standalone and consolidated financial statements, overview of K2 Capital’s business, match-wise and broadcasting deal revenues and margins thereof, cash flow details, long term incentive plans with key employees, future projections, etc. Costanza was, however, not provided with and did not request the SHA (which deprived Costanza of the information about the purchase price paid by Vandelay for acquisition of 25% of K2 Capital) and any historical business plans, forecasts or budgets produced by K2 Capital.
27. Kramerica requested that a draft report be circulated to the parties by Costanza before issuing its final report to enable the parties to comment on Costanza’s findings. According to Kramerica, this would make the valuation more accurate particularly since Kramerica and Vandelay were not provided with an opportunity to give their comments and observations on the data provided to Costanza for the valuation.
28. However, Costanza did not accept Kramerica’s request for a draft report and directly submitted its final valuation report (“**Costanza Report**”) on 9 January 2024. Costanza determined the Fair Market Value of K2 Capital at INR 1014.04 per equity share. The Costanza Report was released to Kramerica and Vandelay on the same date. In its report, Costanza noted that “the basis of value will be fair value. Fair value means the amount for which an asset could be exchanged between a knowledgeable, willing buyer

*and a knowledgeable, willing seller in an arm's length transaction as of the date(s) of the valuation".*

29. After receiving the Report, Vandelay exercised the 'put' option under Clause 7.2 of the SHA by way of its notice dated 10 January 2024 to Kramerica and requested an aggregate payment of INR 507,02,00,000/- for its 50,00,000 equity shares.

*The Dispute*

30. Following up on its letter dated 10 January 2024 and on account of the impending departure of Sir Guardiola by the end of the season, on 12 January 2024, Vandelay requested Kramerica: (i) to propose the modalities for concluding the acquisition of the shares, and (ii) to provide them with a status update, including the next steps. Some relevant excerpts from Vandelay's letter dated 12 January 2024 are reproduced below:

*"To,  
Nathan Ellis (CEO, Kramerica)*

*Dear Nathan,*

*We refer to our notice dated January 10, 2024 whereby Vandelay had conveyed its decision to exercise the 'put' option pursuant to Clause 7.2 of the SHA. In this regard, we look forward to hearing from you on the following:*

*a. Kramerica's proposal on modalities of concluding / consummating the sale and purchase of Vandelay's stake in K2 Capital in order to fulfil Kramerica's binding obligation under the SHA.*

*b. Status and confirmed date of departure of the Coaching Team of United India FC and the next steps in relation thereof.*

*Request you to revert at the earliest. Nothing stated herein should prejudice Vandelay's rights under law and/or SHA..."*

31. Vandelay also followed up with Kramerica by way of email on 15 January 2024. The relevant extract of the same is reproduced below:

*"Dear Nathan,*

*We write further to our letters dated 10 January 2024 and 12 January 2024. Considering under the SHA the acquisition of Vandelay's stake in K2 Capital by Kramerica is to be timed with the Change of Coaching Team at United India FC, your prompt response to our communications is critical and will be highly appreciated. We hope that both the shareholders can in good faith agree on next steps to ensure sale of Vandelay's stake simultaneous with the Change of Coaching Team.*

*We look forward to hearing from you at the earliest....*



*Best, Raveena Singh (on behalf of Mr. Sharma)”*

32. Kramerica responded to Vandelay’s letter on 16 January 2024. Vandelay was informed that the change of the coaching team and exit of Sir Guardiola was still “a few weeks away” and that Kramerica would respond “within a week”.

*“Raveena, thank you for your email and I apologise I haven’t responded yet. We have a short week here in the UK (public holidays yesterday and today). By way of an update, the exact timing of the Change of Coaching Team is uncertain at this stage and still a few weeks away. We have been busy meeting sponsors this week but I will get back to you next week.*

*Have a good week ahead and thanks for your patience,  
Nathan”*

33. In the meantime, news reports emerged that Sir Guardiola would leave United India FC by end of February 2024 and that the club had appointed a new Coaching Team, led by Spanish coach Xavi to take over immediately thereafter. On 18 January 2024, in an exclusive interview to an Indian journalist, Sir Alex alleged that he was treated unfairly by the management of United India FC. He also alleged that the “Kramerica guys sitting in the UK were only interested in money and did not care about the welfare of players...”.

34. In view of the above reports, on 23 January 2024, Vandelay issued another email to Kramerica, calling upon Kramerica to urgently provide an update on the status of the ‘Change of Coaching Staff of United India FC. Vandelay also enclosed with its email a draft share purchase agreement and called upon Kramerica to conclude the sale of securities simultaneously with the Change of Coaching Team:

*“Dear Nathan,*

*This is in furtherance of our earlier communications on this subject. As per the terms of the SHA, once the ‘put’ option has been exercised by Vandelay, it is a concluded contract and binding on Kramerica.*

*Accordingly, and in terms of the SHA, Kramerica is required to acquire Vandelay’s shareholding in K2 Capital at the Fair Market Value determined by Costanza simultaneous to the Change of the Coaching Team at United India FC.*

*We have been following up with you for the last 2 weeks. While we did not receive your response on closing mechanics, your email of January 16, 2024 did mention that the exact timing of the Change of Coaching Team is uncertain at this stage and still a few weeks away. You also mentioned that you would respond to our email by next week.*

*Accordingly, we were hoping to get your response on closing mechanics by now, however, we did not receive the same. I am sure you have seen Sir Alex's interview in the media. May I request you to urgently send an update on the status of the 'Change of Coaching Team'. In the meantime, I am taking the liberty of enclosing a draft share purchase agreement which can be executed to formally record the terms of the acquisition.*

*Since the sale of shares pursuant to Vandelay's put option is between the two shareholders of K2 Capital, the closing mechanics are fairly simple and straightforward and no government approval is required for the same. Accordingly, the SPA can be executed by the end of this week. We note through media reports that the existing Coaching Team is due to leave end of February 2024 and a new team will take over immediately thereafter.*

*Accordingly this matter should be dealt with on priority and the parties should work together to expedite the process so that the timelines for simultaneous closing of the acquisition under the SHA and the Change of Coaching Team of United India FC are complied with. We expect a prompt response from you on the above and the draft SPA (as attached) so that parties can execute the SPA end of this week.*

*Best, TS Sharma*

35. However, as no response was received from Kramerica, Vandelay sent a "notice" to Kramerica on 1 February 2024. It was alleged that Kramerica was deliberately and intentionally delaying the performance of its obligations under Clause 7.2 of the SHA. Accordingly, Vandelay called upon Kramerica in a "*final attempt to resolve the disputes between the parties*" to confirm within 24 hours from the receipt of its letter that Kramerica shall acquire Vandelay's shareholding in K2 Capital at the Fair Market Value determined by Constanza simultaneously with the Change of the Coaching Team of United India FC. Vandelay threatened that should Kramerica fail to comply with the above, it shall be coerced to take all necessary actions, including initiating appropriate legal proceedings to protect its rights and remedies.
36. In its response dated 2 February 2024 to the letter from Vandelay, Kramerica informed Vandelay that they were discussing internally and would respond promptly, though unlikely within 24 hours. Kramerica further reiterated Vandelay that the Change of the Coaching Team was not expected "*imminently*".

*"Dear Raveena,*

*We are in receipt of your letter. Nathan is out of office but we are discussing internally and will respond to you promptly, though we are unlikely to be able to do so within the 24 hours, as you requested. We would also note that the exact timing of the Change of Coaching Team has not been finalized and it is not expected imminently.*

*Kind regards*

*Emma (on behalf of Nathan)''*

37. However, on 3 February, 2024, Vandelay invoked arbitration under the SHA and sent its notice of arbitration to Kramerica seeking the following main reliefs:
- (a) An order directing Kramerica to specifically perform its obligation under the SHA by completing the transfer of 50,00,000 equity shares held by Vandelay in K2 Capital to Kramerica for a total purchase consideration of INR 507,02,00,000/-;
  - (b) Interest at 12% per annum on purchase consideration of s INR 507,02,00,000 for each day that the sale of the equity shares held by Vandelay in K2 Capital to Kramerica remains pending beyond the timeline prescribed in Clause 7.2 read with paragraph 4 of Annexure I of the SHA; and
  - (c) Pending the arbitration and enforcement of the award, to direct the Respondents to undertake and ensure that the Change of Coaching Staff shall not be completed until Kramerica has complied with its obligation under Clause 7.2 of the SHA to purchase 50,00,000 equity shares held by Vandelay in K2 Capital for a total purchase consideration of INR 507,02,00,000/-.
38. In its notice of arbitration, Vandelay claimed that Kramerica was completely unresponsive and the dispute between the parties has not been settled or otherwise resolved. According to Vandelay, under the Indian law, the requirement of pre-arbitration consultation is not mandatory if it has been reduced to an empty formality. Vandelay further advanced the following contentions in its notice:
- (a) Kramerica is in breach / anticipatory breach of its obligations under the SHA.
  - (b) In spite of repeated reminders and follow-ups, Kramerica has obfuscated and sought to derail the issue by failing to abide by its obligations under the SHA and/or provide a clear timeline for the acquisition of Vandelay's shares in K2 Capital.
  - (c) The interim relief sought by Vandelay should be granted because of Kramerica's conduct in refusing to comply with the obligations under the SHA. In any event, Kramerica does not and cannot dispute its obligation to purchase Vandelay's shares. Media reports cited sources to suggest that Kramerica's credit rating has recently been downgraded and there is a strong possibility it would not be able to honour the award.
39. Kramerica sent its response to the notice of arbitration on 12 February, 2024. Kramerica opposed the reference to arbitration *inter alia* on the following main grounds:



- (a) Vandelay blatantly disregarded the condition precedent to the Tribunal's substantive jurisdiction under Clauses 11.1 and 11.2 of the SHA and that the Tribunal is accordingly deprived of jurisdiction. Under the English law (in the Respondent's respectful submission, the law governing the agreement to mediate and arbitrate will be the law of the seat i.e. United Kingdom as the parties have not made an express choice of governing law for the arbitration agreement), Vandelay's failure to comply with the mandatory obligation to mediate deprives the Tribunal of jurisdiction. The same position applies even under the Indian law.
- (b) Even otherwise, there has been no breach by Kramerica particularly when the SHA itself provides that the share purchase could have been completed within 60 days of the Change of Coaching Team. Further, the sale and purchase mechanism in the SHA requires a valuation of K2 Capital's shares at Fair Market Value based on generally accepted international standards for valuation. In the absence of such a valuation, Kramerica was not obliged to purchase Vandelay's shares, and it will not be obliged to do until the Arbitral Tribunal has determined the correct contractual Fair Market Value.
- (c) The Costanza Report does not comply with the requirements of the SHA and/or the Indian law. The Indian law permits a challenge to the valuation report. The primary grounds of challenge to the Costanza Report are as follows: (a) Costanza was not provided with and did not request some critical documents before arriving at the valuation; (b) a draft of the report was not shared with the parties before finalizing the same; and (c) Costanza failed to challenge or evaluate the business plan of K2 Capital. In other words, Costanza departed from generally recognised international standards for valuation and proceeded on a fundamentally erroneous basis.
- (d) None of the grounds cited by Vandelay fulfil the test for the grant of interim relief under the Indian law. Vandelay has failed to show that there is a real and substantial risk of dissipation of assets by Kramerica.
40. In the meantime, on 15 February 2024, Kramerica announced in a press release that Sir Alex Guardiola would leave United India FC with effect from 29 February, 2024 and Xavi and his team would replace them with immediate effect.

## **VI. CONSTITUTION OF THE ARBITRAL TRIBUNAL**

41. The Arbitral Tribunal comprising of three arbitrators, Justice (Retd.) Priya Reddy, Ms. Susan Ross KC and Mr. Rohan Desai (Senior Advocate) has been constituted.

42. The Arbitral Tribunal has fixed the matter for hearings on 24 and 25 February, 2024. K2 Capital is only a proforma party in this dispute and no arguments are required to be advanced on its behalf.

## **VII. ISSUES TO BE RESOLVED**

43. The issues to be heard by the Tribunal at the hearings on 24 and 25 February 2024 can be broadly summarised as follows:

- (a) Whether the agreement to mediate and arbitrate will be governed by the United Kingdom law (as the law of the seat) or the Indian law;
- (b) Whether the Arbitral Tribunal has jurisdiction to determine the issues in this arbitration;
- (c) On merits:
  - c1: Whether Kramerica is in breach of its obligations under the SHA;
  - c2: What is the standard to challenge a valuation report under the Indian law and whether the Costanza Report complied with the SHA and/ or the Indian law; and
- (d) Whether Vandelay has made out a case for the grant of interim relief during the pendency of the arbitration.

.....

**EXHIBIT-1**

**SHAREHOLDERS AGREEMENT**

By and Amongst

Vandelay Ventures Private Limited

AND

Kramerica UK Sporting Limited

AND

K2 Capital Private Limited

Dated 1 June 2018

“**Fair Market Value**” shall mean the fair market value of the Securities of the Company as determined by any of the Big Four. The valuation shall be determined based on generally accepted international standards for valuation, and the valuer may consider such factors as historic performance, Book Value of Equity, goodwill and the future potential of the Company...”

“**Change of Coaching Team**” shall mean the departure of Sir Alex Guardiola and his team of assistant manager, strengthening coach and goalkeeping coach as the coaching team of United India FC;

“**Consultation Period**” shall have the meaning assigned to it in Clause 11.1;

...

“...7.2 **Change of Coaching Team of United India FC**

(i) In the event there is a proposed Change of Coaching Team of United India FC, then Kramerica shall promptly, and no later than three (3) calendar days after the decision of Change of Coaching Team is taken, deliver a written notice in this regard to Vandelay (“**Kramerica Notice**”), giving all relevant details of the proposed Change. Vandelay shall, post receipt of the Kramerica Notice have the right (but not the obligation) to sell all (but not less than all) of the securities of K2 Capital held by Vandelay to Kramerica in accordance with the procedure set out in paragraph 4 of Annexure 1 to this Agreement.”

...

“**11. DISPUTE RESOLUTION**

11.1 Any dispute, controversy, claim or difference of any kind whatsoever arising out of, relating to or in connection with this Agreement, or the interpretation, breach, termination or invalidity thereof (including the validity, scope and enforceability of this arbitration provision) (“**Dispute**”), shall first be attempted to be resolved through discussions and consultations between the Parties in good faith for a period of thirty (30) calendar days after written notice has been delivered by any Party to the other Party (“**Consultation Period**”).



11.2 If the Dispute remains unresolved upon expiration of the Consultation Period, any Party may in its sole discretion elect to submit the matter to arbitration with notice to any other Party or Parties (“Arbitration Notice”). The arbitration shall be conducted in India.

11.3 The juridical seat of the arbitration shall be in United Kingdom.

11.4 The language of the arbitration proceedings and of all written decisions and correspondence relating to the arbitration shall be English.

11.5 There shall be a panel of three arbitrators. Kramerica shall appoint the first arbitrator, Vandelay shall appoint the second arbitrator and the third arbitrator shall be appointed by the other two arbitrators (the Arbitral Tribunal).

11.6 Any party to the Dispute shall be entitled to seek preliminary injunctive relief, if possible, from the Courts at New Delhi, India pending the constitution of the arbitral tribunal.

11.7 The award of the arbitral tribunal shall be final and binding upon the Parties thereto.

11.8 During the adjudication of any Dispute by an arbitral tribunal, the Parties shall continue to perform this Agreement in good faith, save for any obligations under this Agreement which are the subject of the Dispute.”

...

#### **“15.4 Governing Law and Jurisdiction**

This Agreement shall be governed in all respects by the Applicable Laws of India and, subject to the provisions of Clause 15 (Dispute Resolution), the courts at New Delhi, India shall have exclusive jurisdiction.”

#### **“Annexure 1**

##### **Change of Coaching Team**

4.1 As soon as practically possible, after the decision of Change of Coaching Team is taken, but no later than twenty one (21) days after Kramerica informs Vandelay, K2 Capital shall appoint a reputed auditor (jointly agreed to by Vandelay and Kramerica) to calculate the Fair Market Value. If the Parties are unable to agree who to appoint as valuer within the period of twenty one (21) calendar days, then Vandelay shall have the right to appoint the auditor (not being Vandelay’s accountant or auditor). The cost of the valuation shall be paid for by K2 Capital. The Parties shall provide all information reasonably required by the auditor for determining the Fair Market Value. The auditor shall send a written report to Kramerica and Vandelay of the Fair Market Value within thirty (30) calendar days.

4.2 Within a period of fifteen (15) calendar days, from the date of the submission of the report by the auditor to Kramerica and Vandelay, Vandelay shall inform Kramerica by written notice of its binding decision whether or not to sell all (but not less than all) of the securities of K2 Capital held by Vandelay at the Fair Market Value indicated by the auditor.

4.3 If in the decision taken by Vandelay, it elects to sell (but not less than all) the securities of K2 Capital held by Vandelay, Kramerica, K2 Capital and Vandelay shall simultaneous to the Change of Coaching Team and no later than sixty (60) calendar days thereafter complete all formalities including transfer of securities to Kramerica and payment of the Fair Market Value

in respect thereof. This period may be extended by mutual agreement of the parties or if and as necessary to obtain any Government approval required for such transfer.”

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*The Moot Proposition has been drafted by Mr. Aayush Jain. Any attempt to contact them shall result in immediate disqualification.*

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*The current Moot Proposition may not be used by any participant, or any other party, for any reason, including intra-school competitions, without the prior written consent of the Organising Committee*