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

**SUMMONS FOR JUDGMENT NO. 41 OF 2013  
WITH  
NOTICE OF MOTION NO.1596 OF 2014  
IN  
SUMMARY SUIT NO.487 OF 2013  
WITH  
NOTICE OF MOTION NO.348 OF 2014  
IN  
SUMMARY SUIT NO. 487 OF 2013  
WITH  
NOTICE OF MOTION NO.1329 OF 2014  
IN  
LEAVE PETITION NO.159 OF 2013  
IN  
SUMMARY SUIT NO.487 OF 2013**

M/s Polycab Wires Pvt. Ltd.

...Plaintiff

**VS**

M/s Nagarjuna Oil Corp. Ltd.

...Defendant

.....  
Mr Heeralal Chaturvedi for the Plaintiff.  
Mr Ashutosh Gole for the Defendant  
.....

**CORAM : S.C. GUPTE, J.**

**FEBRUARY 02, 2015**

**P.C. :**

This Notice of Motion, Notice of Motion No.348 of 2014, is taken out by the Defendants under Section 8 of the Arbitration and Conciliation Act, 1996 ( for short "**Arbitration Act**"), for referring parties to the Arbitration. The suit claim arises out of a purchase order signed between the parties. It is not disputed that the purchase order contains an arbitration clause.

2           It is submitted by the Plaintiff that by a letter dated 22 September 2012, the Defendant has admitted the Plaintiff's claim and, therefore, there is no

dispute between parties, requiring reference to Arbitration. Learned Counsel for the Plaintiff relies on a judgment of a learned single Judge of this Court in the case of **M/s Polycab Wires Pvt. Ltd. Vs. M/s Lanco Infratech Ltd.**<sup>1</sup> and submits that where there is no dispute between the parties, there is nothing to be referred to Arbitration. It is submitted that in the present case, there is a reply to the Plaintiff's demand initially submitted by the Defendant itself on 22 September 2012 and thereafter, by its Advocates on 9 October 2012. In the Defendant's reply, without joining issues with the Plaintiff's demand, the Defendant has requested the Plaintiff to wait till the end of December 2012, whilst in the Advocate's reply, the Defendant has denied the contents of the notice and put the Plaintiff to the proof of its claim. The Defendant has further claimed in the Advocate's reply that whilst it was not dealing with the merits of the Plaintiff's claim, actual pending dues would be finalized at the time of settlement. The Plaintiff was accordingly requested to avoid further communication in that regard. It is the Plaintiff's case that in spite of this correspondence, no payment has been forthcoming from the Defendant and, accordingly, a decree is prayed for a sum of Rs.1.54 crores, being the principal amount and interest at the rate of 18 % p.a., thereon.

3 Non-payment of the Plaintiff's dues by itself amounts to a dispute, which requires to be referred to Arbitration. In this case, the correspondence relied upon by the Plaintiff does not indicate that there is an unequivocal admission of the liability, entitling the Plaintiff to a decree under Order XII Rule 6 of the Code of Civil Procedure, 1908. The subject matter of the suit, namely, non payment of the Plaintiff's dues arising under a purchase order between the parties, being covered by an arbitration agreement contained in the purchase order, the parties will have to be referred to arbitration. The tax invoices, on which the Plaintiff bases its claim, are issued in pursuance of the purchase order, which in turn contains an arbitration clause. This clause would apply to all sales effected by the Plaintiff to the Defendant under the purchase order. The Judgment of the learned Single Judge of this Court in **Polycab Wires Pvt. Ltd.** (supra), does not apply to the facts of the present case.

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1 Appeal (I) No. 200 of 2014 in NMS No.253 of 2014 in SS No.475 of 2013 decided on 5.9.2014

4                The Notice of Motion is, accordingly, made absolute in terms of prayer clause (a). There shall be no order as to costs.

5                In view of the order passed in Notice of Motion No.348 of 2014, other Motions, namely, Notice of Motion Nos.1329 of 2014 and 1596 of 2014, do not survive and are disposed of accordingly. So also, the Summons for Judgment No.41 of 2003 is disposed of with no orders. Summary Suit No.487 of 2013 is also disposed of in view of the subject matter of the suit being referred to arbitration.

**( S.C.GUPTE J. )**