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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION APPLICATION NO.191 OF 2014**

M/s. Reunion Engineering Co. Pvt. Ltd. ... Applicant

Vs.

M/s. Petronet MHB Ltd. ... Respondent

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Mr. P.S. Colabawalla along with Mr. Atul Thakkar, i/b. Mulla & Mulla & Craigie Blunt & Caroe, for the Applicant.

Mr. Minoo Siodia, a/w. Ms. Raksha Thakkar, for the Respondent.

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

**DATED : MARCH 19, 2015**

**P.C. :**

. The Arbitration Application is for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. The disputes between the parties arise out of a contract of electrical and instrumentation work for certain terminals of the Respondent. There is an arbitration clause contained in the contract, the relevant terms of which are to the following effect :-

**14. ARBITRATION**

14.1 Disputes or differences arising out of or in relation to agreement/contract shall be referred to the Functional Director of the owner who may either act himself as Sole Arbitrator or nominate some Officer of the owner to act as an Arbitrator to adjudicate the disputes and differences between the parties (except those in respect of which the decision of any person is by the Contract expressed to be final and binding).

14.2 The Contractor shall not be entitled to raise any objection to the appointment of such officer of the owner as the sole arbitrator on the ground that the said officer is an officer of the owner or that he/she contract relates or that in the course of duties as an officer of the owner he/she has/had expressed views on all or any of the matters in dispute or difference.

14.3 In the event of the arbitrator to whom the matter is originally referred to, is transferred or vacates office, the Function Director, aforesaid shall nominate another officer of the owner to act as arbitrator.

14.4 Such officer nominated as Sole Arbitrator shall be entitled to proceed with the arbitration from the stage at which it was left by the predecessor. It is the term of this contract that no person other than the Functional Director or a person nominated by Functional Director of the owner shall act as Arbitrator.

2. The parties went through one round of arbitration, in pursuance of an invocation of this clause by the Applicant, before a sole Arbitrator, who was the station in charge of the Respondent at Bangalore. The award of the sole Arbitrator was set aside by this Court on an application under Section 34 by the Applicant. By an order pronounced on 10 June 2013, a learned Single Judge of this Court quashed and set aside the impugned award and remanded the matter back for reconsideration before the same Arbitrator and/or the other. It appears that, in pursuance of this order, a notice was addressed by the original sole Arbitrator to the parties fixing a date for further proceedings in the matter. It is the case of the Applicant that the matter is not remanded by this Court to the same Arbitrator but that there is an

option to go before the same Arbitrator or any other Arbitrator. It is submitted by learned Counsel for the Applicant that, in the facts of the case, the disputes between the parties ought to be referred to an independent Arbitrator outside the scheme of Clause 14 quoted above. On the other hand, it is submitted by learned Counsel for the Respondent that the matter is in fact remanded in the first place to the same Arbitrator and only if the same Arbitrator cannot enter upon reference, the disputes could be referred to another Arbitrator. It is submitted that though the law has since been settled by a Division Bench of this Court holding that an arbitration reference cannot be remanded by this Court, the particular order of the learned Single Judge has not been carried in appeal by the Applicant and holds the field as of the date. Secondly, it is submitted that, at any rate, even if the matter has to go before another Arbitrator, such Arbitrator must be appointed within the framework of Clause 14 quoted above.

3. It is submitted by Mr. Siodia, learned Counsel appearing for the Respondent that, without prejudice to his contention that the matter was in fact remanded to the same Arbitrator, his client is agreeable for appointment of another Arbitrator. But the learned Counsel submits that such Arbitrator must be appointed having regard to the procedure for appointment prescribed by the contract between the parties, namely, Clause 14 of the contract. In view of this submission, the first question raised by the learned Counsel for the Applicant need not be considered in the present Arbitration Application.

4. On the second point, namely, appointment of an

independent Arbitrator, learned Counsel for the Applicant relies upon a judgment of the Supreme Court in the case of **Indian Oil Corporation Ltd. v/s Raja Transport Pvt. Ltd.**<sup>1</sup> Relying on this judgment, it is submitted that the present case is a proper case where an independent and impartial Arbitrator ought to be appointed. It is submitted that in the facts of the present case, there is a reasonable apprehension that the person mentioned in the arbitration agreement as the Arbitrator is not likely to act independently or impartially.

5. As held by the Supreme Court in the case of **Indian Oil Corporation Ltd.**(supra), whenever the arbitration agreement between the parties requires reference of disputes to a named Arbitrator or to an Arbitrator to be appointed in the manner provided in the agreement, referring the disputes to the named Arbitrator or to the Arbitrator appointed in accordance with the procedure provided in the agreement, is the rule. Ignoring such a provision and nominating an independent Arbitrator shall be an exception to this rule. The Court is permitted to make this exception only when there is material on record to create a reasonable apprehension that the person mentioned in the arbitration agreement is not likely to act independently or impartially or if such person is not available. In the present case the arbitration agreement does not require reference to a named Arbitrator, but it requires reference of disputes to a person chosen from a class of person mentioned in the agreement. There is no material placed on record by the Applicant in the present Arbitration Application (nor it is possible to generally make out such a case) that all persons of the class of persons

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<sup>1</sup> (2009) 8 Supreme Court Cases 520

named in the agreement are such as are not likely to act independently or impartially or are not available. It would be another matter if the disputes were to go back to the same Arbitrator. In that case, possibly, the Applicant could have some ground to urge that the Arbitrator is likely to be biased but when we have no particular person in front of us to whom the disputes are to be referred for arbitration, it is difficult to say that such unknown person is likely to be biased. In that view of the matter, it is not possible in the facts of the present case to make an exception and refer the disputes to an Arbitrator by ignoring the appointment procedure prescribed in the agreement.

6. Accordingly, the Arbitration Application is disposed of by directing the Respondent to appoint a new Arbitrator in accordance with the appointment procedure in Clause 14.1 of the General Conditions of Contracts forming part of the contract between the parties. Mr. Siodia, learned Counsel for Respondent agrees that such person will not be in any way connected with the disputes between the parties and shall act objectively in the matter. No order as to costs.

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