

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 266 OF 2014

M/s.Fortune Credit Capital Limited Applicant

VERSUS

**M/s.Sainath Herbal Care Marketing
Private Limited** Respondent

Mr.Anoop Sharma for the Petitioner.

None for the Respondent.

CORAM : R.D. DHANUKA, J.

DATED : 12th AUGUST, 2015

P.C.

The learned counsel appearing for the petitioner tenders affidavit of service and states that the respondents are served by way of substituted service. Affidavit of service is taken on record.

2. By this application filed under section 11(6) of the Arbitration and Conciliation Act, 1996, the applicant seeks appointment of an arbitrator.

3. Learned counsel appearing for the applicant invited my attention to the arbitration clause recorded in clause 24 of the agreement dated 19th January, 2011 which provides for appointment of three arbitrators if there is disagreement about the name of the sole arbitrator.

4. Dispute arose between the parties. The applicant through its advocate issued a notice on 22nd May, 2014 to the respondent and nominated Mr.Simil Purohit, advocate as an arbitrator and called upon the respondent to nominate its arbitrator. The respondent company has not replied to the said notice. Two of the directors of the respondent have however responded to the said notice and have contended that

they were not concerned with the said dispute.

5. Since the respondents have not nominated any arbitrator, this application filed under section 11(6) of the Arbitration Act is maintainable. A perusal of the agreement indicates that the same is duly signed by both the parties. In my view the arbitration agreement exist.

6. The applicant has already nominated Mr.Simil Purohit as its nominee arbitrator.

6. Mr.Chetan Kapadia, learned advocate is appointed as a nominee arbitrator on behalf of the respondent.

7. The arbitrator nominated by the applicant and the arbitrator appointed by this order shall appoint presiding arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

8. Arbitration application is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]