

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.36 OF 2017

Alfa Laval (India) Limited	Petitioner
Vs.	
Modi Dairy, through its partners	Respondent

Mr. Chirag Dave with Mr. Dnyaneshwar Jadhav i/by M/s Legasis
Partners for the Petitioner.
None for the Respondents.

CORAM : K.R.SHRIRAM, J.
DATE : 13th OCTOBER, 2017

P.C.:

1. Respondent is absent. Counsel states that Respondent has been served and relies upon an affidavit-of-service of one Ajay Lokhande affirmed on 20th July 2017.

2. Petitioner has based its Petition on a technical offer made by Petitioner to Respondent vide letter dated 24th May, 2013 offer Ref: DE 2013/10118 and annexures thereto read with Purchase Order dated 24th May, 2013 placed by Respondent. The letter of offer dated 24th May, 2013 relied upon by Petitioner, copy whereof is annexed to the Petition, has not been signed by Petitioner's representative. However, in the Purchase Order dated 24th May, 2013 placed by

Respondent, it is stated by Respondent:-

*“We are pleased to confirm our PO as follows:-
All technical details and scope of supply shall be as
per your offer reference No. DE 2013/10118 Dtd:23rd
May 2013 Rev 02.”*

3. Therefore, Respondent has accepted the terms and conditions as per offer document of Petitioner Item No.11 in the index of offer documents refers to terms and conditions for the offer. Clause 15(F) of the terms and conditions contains the Arbitration clause which reads as follows:-

*“Arbitration
All disputes, questions or differences whatever which
may at any time arise between the parties hereto
relating to the contract and whether as to construction
or otherwise shall be referred to arbitration in
accordance with the provisions of Arbitration and
Conciliation Act 1996 or such other enactment relating
to Arbitration as may be in force for the time being. The
venue for arbitration shall be Mumbai/Pune.”*

4. By accepting the terms of offer the Respondent has also accepted the Arbitration clause. Even in its reply through its Advocate's letter dated 12th January, 2017, Respondent has not denied that there is an arbitration agreement. Therefore, it is safe to conclude that there is an Arbitration Agreement between Petitioner and Respondent.

5. Respondent has not filed any reply or entered any appearance though served. From the affidavit-of-service it is evident that Respondent was served on 29th June, 2017 by Petitioners.

6. In the circumstances, the following order is passed:-

ORDER

Mr. Justice A.R.Joshi (retired), former Judge of this court having his address at Plot No. 103, “Chaitanya” Bungalow, Indrayani Colony, Chakan Road, Talegaon Dabhade, Dist.-Pune 410 508, telephone number:- 02114-222091 is appointed as sole Arbitrator to adjudicate upon the dispute between the Petitioner and Respondent arising out of, in connection with and relating to technical offer Ref: DE 2013/10118 Dated 23rd May, 2013-Rev 2, for design, manufacture, supply, erection, start-up and commissioning of 30 TPD Skimmed Milk Powder Plant. The fees and administrative expenses of the Arbitrator and typing charges and venue charges shall be shared equally between the parties and will be cost in the Arbitration Proceedings. The learned Arbitrator to send a communication in writing in terms of Section 11(8) read with Section 12(1) of Arbitration and Conciliation Act, 1996 within two weeks of receiving communication from Petitioner’s Advocate and

before entering into reference.

7. The Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)