

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

ARBITRATION APPLICATION NO.187 OF 2016

M/s. Bhairav Bearing CorporationApplicant

Vs.

M/s. Nod Bearing Private LimitedRespondent

Mr. Sandeep S. Sharma for applicant.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 2nd NOVEMBER, 2017

PC.:

1 This application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the said Act). Clause 14 of the Authorized Dealer Agreement dated 26th July, 2011 reads as under :

"14. Settlement of dispute and Governing Law.

a. All questions disagreements or disputes whatever shall at any time here after arise between the parties hereto touching or concerning this agreement or the construction meaning operation or effect thereof, or any clause herein contained or as to the rights duties or liabilities of the parties shall be finally settled by the arbitration. The arbitration shall be conducted in India in accordance with the commercial arbitration rules of the India. The award rendered by the arbitrators shall be final and binding upon both parties. This agreement shall be interpreted and governed by the laws of India."

2 Petitioner sent an email dated 29th September, 2015 invoking arbitration. Respondent, it is stated, has not replied. In the affidavit in reply, respondent has stated that no arbitral dispute has been disclosed and the purported dispute disclosed, if any, is barred by *res judicata*, malafides of applicant and the purported debit notes raised by applicant are after the

termination of the Agreement. Section 11(6-A) of the said Act provides as under :

"11. Appointment of arbitrators :

.....

(6-A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

.....

3 Therefore, this Court while hearing the application under Section 11 of the said Act, has to confine itself only to the examination of the existence of an arbitration agreement. The rest of the points can be raised by the parties before the Arbitral Tribunal.

4 In the circumstances, keeping open the rights and contentions of the parties to be raised before the Arbitral Tribunal, Mr. Firoz Bharucha, an Advocate, practicing in this Court, is appointed as Sole Arbitrator to arbitrate on all disputes and differences arising out of or in connection with or relating to Authorized Dealer Agreement dated 26th July, 2011.

5 The fees of the Arbitrator, administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by applicant and 50% by respondent and the same shall be subject to cost in the arbitral proceedings.

6 The Arbitrator to communicate to the Advocate for applicant with copy to respondent the disclosures as required under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 within three weeks of receiving a copy of this order from applicant's Advocates.

7 Liberty to apply.

8 Application accordingly stands disposed.

(K.R. SHRIRAM, J.)