

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

IN ITS COMMERCIAL DIVISION

COMM.ARBITRATION APPLICATION NO.21 OF 2017

Tema India Ltd.)....Applicant
V/s.

Essar Projects (India) Ltd.)....Respondent

Ms.Khooshnum Davierwala a/w Mr.yazdi Jijina i/by M/s.Mulla &
Mulla & Craigie Blunt and Caroe for the applicant.
None for respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 28.11.2017**

P.C.:-

1 This is an application under Section 11 of the Arbitration and Conciliation Act 1996.

2 Respondent had issued a Letter of Intent dated 3.7.2008 for supply of 52 Shell and Tube Exchangers to Essar Oil Vadinar Limited-Refinery Project, Vadinar, India. Applicant accepted the Letter of Intent and returned one set duly signed by them to respondent vide letter dated 9.7.2008. Thereafter respondent issued another Purchase Order dated 1.8.2008 to the applicant. The terms and conditions for the supply of 52 Shell and Tube Exchangers are contained in the purchase order. One of the attachment to the

purchase order was attachment 1-general terms and conditions. Clause-43 of the general terms and conditions contains arbitration clause which reads as under :-

“43.1- Any claim dispute or controversy arising out of or relative to this PURCHASE ORDER, the activities performed hereunder, or the breach hereof, which within a reasonable time from receipt of first notice of the existence of such claim, dispute or controversy cannot be satisfactorily settled by mutual understanding between the parties, shall, whether or not both parties agree that such claim dispute or controversy exists, to be finally settled by arbitration at the request of either of the parties hereto.

(i) The arbitration shall be conducted by a panel of three (3) arbitrators with one (1) arbitrator being selected by PURCHASER and one (1) arbitrator selected by SUPPLIER and the third selected by the two (2) arbitrators.

(ii) On failure of the two Arbitrators, within thirty (30) days to name the third arbitrator, he shall be appointed by the President of the Indian Chamber of Commerce. The venue of arbitration shall be Mumbai.”

3 As disputes arose between the parties, applicant issued notice dated 21.10.2016 calling upon respondent to make payment of a sum of Rs.48,87,44,539/- and also invoked the arbitration clause. The applicant suggested names of 4 persons who could be appointed as sole arbitrator even though the arbitration clause provided for a panel of 3 arbitrators. Respondent did not reply. Therefore, applicant by a letter dated 9.1.2017 nominated Shri Justice F.I.Rebello (retired) as an arbitrator from the side of applicant. To this also, there is no

reply from the respondent.

4 Applicant has filed affidavit of one Ram Ganpat Thakur affirmed on 7.3.2017 confirming service upon respondent. From the affidavit, service appears to have been effected on 8.2.2017. Respondent has neither entered appearance nor filed any affidavit opposing this application. Nobody is present on call either. Therefore, the averments contained in the application are uncontroverted.

5 Having considered the arbitration clause as quoted above, I am satisfied that there is an arbitration agreement between the parties. Therefore, application is allowed in terms of prayer clause-(a) and following order is passed.

ORDER

(a) Mr.Justice F.I.Rebello (retired), former Judge of this court and Chief Justice of Allahabad High Court, having his office at 11-A, Examiner Press, 1st Floor, Dalal Street, Fort, Mumbai-400 001, Tel.No.022-22826021, is appointed as sole arbitrator to arbitrate on the disputes/differences including counter claim, if any, arising out of or relating to or in connection with the Letter of Intent dated 3.7.2008 r/w letter dated 16.7.2008 r/w purchase order dated 1.8.2008 ;

- (b) The fees, administrative expenses, typing charges and venue charges shall be shared equally between the parties and the same will be cost in the arbitral proceeding ;
- (c) Within 3 weeks of receiving a copy of this order, either from the advocates for the applicant or for respondents, the learned Arbitrator shall file with the parties, disclosure in writing as required under Section 11(8) read with section 12(1) of Arbitration and Conciliation Act 1996;
- (d) All rights and contentions of the parties are kept open except the question of existence of arbitration clause ;
- (e) Application accordingly stands disposed.

(K.R.SHRIRAM,J)