

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

COMMERCIAL ARBITRATION PETITION (L) NO.289 OF 2017

Newton Engineering and Chemicals Ltd. .. Petitioner

Vs.

Oil and Natural Gas Copn. Ltd. and Anr. .. Respondents

Mr. Chetan Kapadia a/w. Mr. Rohan Sawant and Mr. Yogendra Singh i/b. Auris Legal for petitioner.

Mr. Pradeep Sancheti, senior advocate a/w. Mr. Aziz Khan and Mr. Deepak Singh i/b. Divya Shah Associates for respondent no.1.

CORAM : K.R.SHRIRAM, J.

DATE : 4th JULY, 2017

P.C.:

1 At the outset, Mr. Sancheti, senior counsel for respondent no.1 raised a grievance that respondent no.2 despite respondent no.1 invoking the bank guarantee, has failed and neglected to release the amounts on a specious ground that there is no order from the Court directing them to release the funds. Though it is for respondent no.1 to take such action against respondent no.2 as advised, it should be observed that there was no order also not to release the funds. Even today, there is no order restraining the bank from releasing the funds and if under the bank guarantee funds are payable, bank shall make the payment.

2 Mr. Kapadia, counsel for petitioner states that his clients have already nominated Mr. Justice S.M. Jhunjhunwala (retired), former Judge

of this Court as their Arbitrator and given notice to respondent no.1. Mr. Sancheti, on instructions states that latest by close of business on 5th July 2017, respondent no.1 shall nominate its Arbitrator and communicate the same to petitioner and Mr. Justice S.M. Jhunjhunwala (retired). Thereafter, it is for petitioner to request the two Learned Arbitrators to appoint the presiding Arbitrator as expeditiously as possible and take necessary steps as directed by the Arbitral Tribunal.

3 The petition filed here under Section 9 of the Arbitration and Conciliation Act, 1996 as amended, be treated as an Application under Section 17 by the Arbitral Tribunal to be constituted.

4 All rights and contentions of the parties are kept open and it is open to petitioner as well as respondent no.1 to file such further pleadings and documents as necessary even for deciding the Application under Section 17.

5 The petition accordingly stands disposed.

(K.R. SHRIRAM, J.)