

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

COMM. ARBITRATION APPLICATION NO. 34 OF 2016

M/s. India Tube Mills and Metal Industries
Pvt. Ltd.

.. Applicant

Vs.

Bharat Oman Refineries Ltd.

.. Respondent

Ms.Prapti Kedia a/w. Ms.Bindu Bhatia i/b Khare Legal Chambers for applicant.

Mr.Dipan Merchant, senior advocate a/w. Mr. S.A. Bhalwal and Ms. Usha Singh i/b Vyas and Bhalwal for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 9TH NOVEMBER 2017

P.C.

1 Heard the counsel for applicant and respondent.

2 It is the case of applicant that one Mr.Narendra Pandey was appointed as Sole Arbitrator and he had been nominated by the Managing Director of respondent before the amendment to Section 12(5) was introduced. The said Arbitrator has resigned.

3 This application is made under Section 11 of the Arbitration and Conciliation Act, 1996 (The said Act) whereas in effect it should have been

filed under Section 15 of the said Act. Be that as it may, Mr. Merchant, senior counsel appearing for respondent states that the issue is rather technical in nature and Mr.Merchant suggests that one Mr.Dinesh Deshpande who had worked with Hindustan Petroleum Corporation Limited, Mumbai be appointed as Sole Arbitrator to continue the arbitral proceedings from the stage at which the earlier Arbitrator resigned.

4 Ms. Kedia appearing for petitioner states that in view of introduction of amendment to sub-section 5 to Section 12 with effect from 23rd October 2015, the power of the Managing Director of respondent to nominate the sole Arbitrator has been taken away. Mr.Merchant states that the Court may not consider Mr.Deshpande as being appointed by the Managing Director of respondent but since technical issues are involved, the Court may consider that respondent is suggesting to the Court to appoint Mr. Deshpande as the sole Arbitrator. Mr.Merchant also states that Mr.Deshpande has agreed to be appointed as sole Arbitrator and that he will submit his declaration of impartiality as prescribed in the said Act.

I am in agreement with the suggestion made by Mr. Merchant.

6 In the circumstances, Mr. Dinesh Deshpande, having office at 401, Shwetsaro, Gaothan Rd. No.1, Chembur, Mumbai 400 071; Mobile No. 9324086456, Email Id : dkdesh12754@gmail.com is appointed as sole Arbitrator in place of Mr. Narendra Pandey who was the earlier Arbitrator. Mr.Deshpande will continue from the stage at which Mr. Pandey resigned.

7 Within three weeks of receiving a copy of this order from either the advocate for applicant or advocate for respondent, Mr. Dinesh Deshpande shall submit to the parties his statement of disclosure in writing as required under Section 11(8) read with Section 12(1) of the said Act.

8 Application accordingly disposed.

(K.R. SHRIRAM, J.)