

***IN THE HIGH COURT OF BOMBAY AT GOA***  
***APPLICATION FOR APPOINTMENT OF ARBITRATOR***  
***NO. 15 OF 2016***

M/s. Shivnath Minerals and Chemicals  
Through Hira Steels Ltd.,  
Through its Rep. Pankaj Agrawal ... Applicant

Versus

M/s. Natcon Minibiz Pvt. Ltd.  
Through its Authorised Officer  
Khimjiharji Patel. .... Respondent

Mr. Rohit Bras De Sa, Advocate for the Applicant.

***Coram : N.M. Jamdar, J.***

***Date : 31 August 2018.***

**P.C.:**

This is an application for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

2. The Applicant is a Partnership Firm registered under the Partnership Act. On 30 September 2012, two partners of the Applicant Firm retired and deed of dissolution was drawn. On 1

October 2012, according to the Applicant, by way of this deed of dissolution, it was agreed that all the assets and liabilities will be transferred to M/s Hira Steels Ltd. It is stated that the Applicant being represented by M/s Hira Steels Ltd. A dispute arose between the Applicant and the Respondent-M/s Natcon Minibiz Pvt. Ltd., who was supplier of the iron ore, during the course of the business for which they had entered into a contract on 26 April 2011. The contract dated 26 April 2011 contains an arbitration clause.

3. The Applicant invoked an arbitration clause vide notice dated 9 April 2012, since the Arbitrator was not appointed. The Applicant filed an application for appointment of Arbitrator bearing No.17/2012 under Section 11(6) of the Act. By order dated 3 May 2013, an Arbitrator was appointed. The Arbitrator rendered its Award on 7 February 2014. The Respondent filed an application under Section 34 of the Act in the Court of the Principal District Judge, North Goa, Panaji. The learned Principal District Judge set aside the Award by judgment dated 30 March 2016 and the matter was remanded back to the Arbitrator. The Arbitrator passed an order dated 23 April 2016, stating that there is no power to remand and mandate of Arbitrator has been terminated.

4. Thereafter, the present application is filed by the Applicant for appointment of an Arbitrator. None appears for the Respondent. This application is pending since the year 2016. Notice was issued to the Respondent on 6 October 2016. The notice was returned unserved due to short time. Thereafter, fresh notice was issued on 23 January 2017. The Respondent have given their address of Bhuj- Kachchh, Gujarat. Notice sent back stating that the premises of the Respondent are locked. Thereafter, the Applicant served the Respondent by way of publication in the local newspaper circulating in Kachchh. This was considered as compliance of the notice by the registry and orders to that effect were passed on 8 June 2018 and 29 June 2018. On that dates, none appeared for the Respondent. To give one more opportunity, the matter was adjourned to 6 July 2018. On 6 July 2018, the learned counsel for the Applicant states that one more notice will be given to the Respondent. Thereafter, affidavit of service has been filed by the Applicant.

5. The Respondent is a Private Limited Company. The learned counsel for the Applicant submits that the address mentioned in the application is the registered address of the Respondent-Company. It is not that the Respondent is completely unaware of the Arbitration proceedings, since the Respondent had filed an application

under Section 34 of the Act. The learned counsel for the Applicant has therefore rightly contended that the Respondent are avoiding to represent themselves in this application. Sufficient opportunity is being given to the Respondent to represent themselves.

6. I have perused the contract between the parties and the notice issued by the Applicant. The contract contains an arbitration clause. The contract is dated 26 April 2011. The dispute has arisen between the parties.

7. On 24 August, 2018, the learned counsel for the Applicant suggested the name of the Arbitrator which was recorded in the order. He has now submitted the disclosure statement of the Arbitrator which is taken on record. Accordingly, Mr. R. G. Ramani, Advocate is appointed as an Arbitrator to arbitrate upon the dispute between the parties arising out of the contract dated 26 April 2011.

8. The Arbitration application is accordingly disposed of.

***N.M. Jamdar, J.***