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

COMMERCIAL ARBITRATION APPLICATION NO.31 OF 2019

Narmada Extrusions Ltd.

..Applicant

Vs.

Rashtriya Chemicals and Fertilizers Ltd.

..Respondent

Mr.Rohaam Cama with Mr.Arnav Misra i/b. M/s.K.Ashar & Co. for
Applicant.

Mr.Anirudh Bhalwal with Mr.K.M. Patil i/b. Vyas & Bhalwal for
Respondent No.1.

CORAM : G.S. KULKARNI, J.

DATE : 18th OCTOBER, 2019

PC.:

Heard learned Counsel for the parties. At the outset Mr.Cama, learned Counsel for the applicant, states that the application concerns two notices inviting tenders and deficit court fees would be paid by the applicant by 22 October 2019. Statement is accepted.

2. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 whereby the applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes between the parties which have arisen under the purchase orders which are issued in pursuance of the tenders dated 15 June 2014 and 17 January 2015. The arbitration agreement between the parties is contained in clause 23 of the NITs in question. There appears to be no dispute in regard to the existence of an arbitration agreement. The applicant by its letter dated 5 December 2015 invoked the arbitration agreement and

requested the respondent to appoint an arbitral tribunal. The respondent did not favourably respond to the notice. Hence the present application came to be filed.

3. The respondent has appeared as also a reply affidavit is filed. The principal contention in the reply affidavit is that there is delay on the part of the applicant in approaching this Court in filing Section 11 application as noted above. In an order passed today on the notice of motion filed by the applicant praying for condonation of delay, delay was condoned. Thus the only objection as urged on behalf of the respondent would not survive as an opposition to Section 11 application.

4. As there exists an arbitration agreement as also a proper invocation of the arbitration agreement praying for appointment of an arbitral tribunal, it would be appropriate that an arbitral tribunal is appointed. As there are two contracts, it would be appropriate that the disputes in regard to both the contracts are referred to a sole common arbitrator. Thus, the following order:-

ORDER

(i) Mr.Akshay Patil, Advocate of this Court, is appointed as a prospective sole Arbitrator to adjudicate the disputes and differences between the parties as arisen under the purchase orders which are issued inviting tenders dated 15 June 2014 and 17 January 2015;

(ii) The learned substitute arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties.

- (iii) At the first instance, the parties shall appear before the prospective arbitrator within 20 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (iv) All contentions of the parties on merits of the disputes are expressly kept open;
- (v) The fees payable to the arbitral tribunal shall be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018;
- (vi) The application is disposed of in the above terms. No costs.
- (vii) Office to forward a copy of this order to the learned Arbitrator at the following address:-

“54, Sindhu House, 3/5 Nanabhai Lane,
Mumbai – 400 001.
Contact No. 66550302 / 66550306 / 9892252175”.

[G.S. KULKARNI, J.]