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

ARBITRATION PETITION NO.431 OF 2015

M/s.Faridabad Metal Udyog Pvt. Ltd.	..Petitioner
Vs.	
Mr.Baldev Bhatia & Anr.	..Respondents

Mr.Niranjan Parekh with Mr.Veer Ashar i/b. M/s.Mansukhlal Hiralal &
Co. for Petitioner.
Ms.Minoo Siodia for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 12th MARCH, 2019

P.C.:

Heard learned Counsel for the petitioner and learned Counsel for
the respondents.

2. This is a petition under Section 14 of the Arbitration and
Conciliation Act, 1996 (for short, “the ACA”) whereby the petitioner has
prayed for the following substantive relief:-

“(a) that this Hon'ble Court may be graciously pleased to
declare that the mandate of the Ld. Sole Arbitrator i.e. Mr.
S.Y. Narvekar (the Ld. Sole Arbitrator-I) stood terminated on
facts and in law and he became functus officio on his failure
to pass an award within the period of 2 years as provided for
in Clause 23 of Annexure V of the Tender Document and all
proceedings conducted thereafter either by the Ld. Sole
Arbitrator-I or by any other Arbitrator or by the Respondent
No.1 including the orders/ minutes/ letter dated
30.10.2014, 27.11.2014 and letter dated 12.1.2015 are
without jurisdiction and are non-est and nullities in law.”

3. As can be seen from the record, this petition is pending since the year 2015. It is filed on 29 January 2015. There is some history to the arbitration proceeding. Initially in the year 2004, Mr.S.Y. Narvekar who was officer of respondent No.2 M/s.Hindustan Petroleum Corporation Ltd., was appointed as a sole arbitrator to adjudicate the disputes and differences between the parties as per the arbitration clause, who also entered reference. The petitioner had appeared before the arbitral tribunal and had filed an application under Sections 7 and 12 read with Sections 14 and 16 of the ACA. The same was decided by the learned sole arbitrator by an order dated 16 August 2005. Thereafter on 10 October 2005 the petitioner filed an application under Sections 18 and 24 of the ACA on which the learned sole arbitrator passed an order dated 6 January 2006. After a substantial lapse of time, on 6 June 2006 the petitioner filed a reply to which the respondent on 23 October 2006 filed a rejoinder. Thereafter Mr.Narvekar, learned sole arbitrator retired who came to be substituted by appointing Mr.Shyam Mustyalwar who was also transferred and Mr.Baldev Bhatia was appointed as a sole arbitrator on 29 October 2013.

4. It appears that there was some hearing before the learned arbitrator Mr.Baldev Bhatia. There was a meeting held by the sole

arbitrator on 27 January 2014 when it is stated that the parties had consented for continuation of the proceedings. This is disputed by the petitioner as the petitioner contends that the petitioner had not given its consent. On this background, the present petition was filed on 29 January 2015. This is how this petition remained pending.

5. After this petition was heard for sometime, in my opinion, considering the peculiar facts and circumstances of the case and that the disputes are pending adjudication in arbitration for quite sometime, it is in the interest of parties that the arbitral tribunal so appointed by the respondent No.2 is substituted by appointing a fresh arbitral tribunal which can undertake adjudication the disputes and differences between the parties under the agreement arising under tender No. LPG-MKTG./E-024/SB/02-03 dated 1 November 2002. Hence the following order:-

ORDER

- (i) Mr.Justice S.M. Jhunhunwala, Former Judge of this Court, is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties, subject matter of the present proceeding, in substitution of the arbitral tribunal as appointed earlier.
- (ii) The learned sole prospective arbitrator, fifteen days before entering 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 petition with a copy to be forwarded to both the parties;

(iii) Learned prospective sole arbitrator shall continue the proceeding from the stage at which the proceedings had reached before the earlier arbitral tribunal.

(iv) The parties are at liberty to make available such Record and Proceedings before the newly appointed arbitral tribunal.

(v) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(vi) All contentions of the parties on merits of the matter are expressly kept open;

(vi) The petition is disposed of in the above terms. No costs.

(vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

address: 49, Bhupen Chambers, 9, Dalal Street, Fort,
Mumbai – 400 001.

Contact Nos. 022-22677136 / 022-22671971.

[G.S. KULKARNI, J.]