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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 405 OF 2019**

Bharat Petroleum Corporation Ltd	...Applicant
<i>Versus</i>	
KK Abraham	...Respondent

Mr Vaibhav Charalwar, *with Mr Amol Bavare and Ms Vrushali P, i/b
Pragnya Legal, for the Applicant.*

CORAM: G.S. PATEL, J.
DATED: 19th November 2019

PC:-

1. The respondent is absent though served. There is an Affidavit of service showing that he has been served at least at one of his two addresses. The affidavit of service is taken on record.

2. The application is under Section 11 of the Arbitration and Conciliation 1996. The applicant owns and operates a liquefied petroleum gas plant in Kochi, Kerala. It floated a tender on 1st March 2014 for gas cylinder handling and allied jobs at this Kochi plant. The respondent put in a bid. The applicant accepted it. It issued a letter of intent. The estimated contract value was Rs. 2,18,47,787/-. The contract was to run for two years from 1st June 2014 until 31st May 2016.

3. Clause 19 of the agreement has an arbitration clause which reads thus:

“19. **Arbitration** (a) Any dispute or difference of any nature whatsoever any claim, cross-claim, counter-claim or set off to the Corporation against the Contractor or regarding any right, liability, act omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the Sole Arbitration of the Director (Marketing Division) of the Corporation or of some officer of the Corporation who may be nominated by the Director (Marketing Division). The Contractor will not be entitled to raise any objection to any such arbitrator on the ground that the arbitrator is an Officer of the Corporation or that he has dealt with the matters to which the contract relates or that in the course of his duties as an Officer of the Corporation he had expressed views on all or any other matters in dispute or difference. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, the Director (Marketing Division) as aforesaid at the time of such transfer, vacation of office or inability to act may in the discretion of the Director (Marketing Division) designate another person to act as arbitrator in accordance with the terms of the agreements to the end and intent that the original Arbitrator shall be entitled to continue the arbitration proceedings notwithstanding his transfer or vacation of office as an Officer of the Corporation. If the Director (Marketing Division) does not designate another person to act as arbitrator on such transfer, vacation of office or inability of original arbitrator. Such persons shall be entitled to proceed with the reference from the point at which it was

left by his predecessor. It is also a term of this contract that no person other than the Director (Marketing Division) or a person nominated by such Director (Marketing Division) of the Corporation as aforesaid shall act as arbitrator hereunder. The award of the arbitrator so appointed shall be final conclusive and binding on all parties to the agreement subject to the provisions of the Arbitration Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder for the time being in force shall apply to the arbitration proceedings under this clause.

(b) The arbitrator shall have power to order and direct either of the parties to abide by, observe and perform all such directions as the arbitrator may think fit having regard to matters in difference i.e. dispute before him. The arbitrator shall have all summary powers and may take such evidence oral and/or documentary, as the arbitrator in his absolute discretion thinks fit, and shall be entitled to exercise all powers under the Arbitration Act 1996 including admission of any affidavit as evidence concerning the matter in difference i.e. dispute before him.

(c) The parties against whom the arbitration proceedings have been initiated that is to say, the Respondents in the proceedings, shall be entitled to prefer a cross-claim, counter-claim or set off before the Arbitrator in respect of any matter on issue arising out of or in relation to the Agreement without seeking a formal references of arbitration to the Director (Marketing Division) for such counter-claim. Cross-claim or set off and the Arbitration shall be entitled to consider and deal with the same as if the matters arising therefrom has been

referred to him originally and deemed to form part of the reference made by the Director (Marketing Division).

(d) The arbitrator shall be at liberty to appoint, if necessary any accountant or engineering or other technical person to assist him, and to act by the opinion so taken.

(e) The arbitrator shall have power to make one or more awards whether interim or otherwise in respect of the difference and in particular will be entitled to make separate awards in respect of claims or cross-claims of the parties.

(f) The arbitrator shall be entitled to direct any one of the parties to pay the costs of the other party in such manner and to such extent as the arbitrator may in his discretion determine and shall also be entitled to require one or both the parties, to deposit funds in such proportion to meet the arbitrators expenses whenever called upon to do so.

(g) The parties hereby agree that the courts in the city of Bombay alone shall have Jurisdiction entertain any application or other proceedings in respect of anything arising under this agreement and any award or awards made by the Sole Arbitrator hereunder shall be filed in the concerned courts in the city of Bombay only.”

4. Then there is clause 21, which says:

“21. **Jurisdiction** : This agreement shall be deemed to have been made in Kochi and shall be construed according to the laws of India and the performance by the

Contractor of and act on his part herein contained shall be considered due in ----- for the purposes of jurisdiction.”

5. According to the applicant the respondent has not paid Provident Fund, ESIC dues and even salaries. There is no reply to the applicant’s demand notices. Due to non-payment of salaries the respondent’s workmen refused to further continue with the tendered work. There was also some labour unrest. It fell to the applicant to resolve these by settling these claims.

6. Correspondence then followed after a termination notice dated 28th January 2016. The respondent failed to reply. It is in these circumstances that arbitration is invoked.

7. The applicant is agreeable to the arbitration being in Kochi where Clause 21 gives jurisdiction. The applicant suggests the name of a retired Judge of Kerala High Court.

(a) **Appointment of Arbitrator:** The Hon’ble Mr Justice R Bhaskaran, retired Judge of Kerala High Court, is hereby nominated to act as a Sole Arbitrator, subject to his willingness.

(b) **Communication to Arbitrator of this order:**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Applicant within one week from today of the order being uploaded.

- (ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

**Arbitrator Mr R Bhaskaran, Retired
Judge, Kerala High Court.**

Address Sreekrishna Kripa, Kaloor,
Kochi 682017

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward his statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Prothonotary and Senior Master of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently in advance of his entering upon the reference to his arbitration. That statement will be retained on the file of this application. Copies will be given to both sides.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator

within one week of this order being uploaded. The information is to include a valid and functional email id.

- (f) **Interim Application/s:** Liberty to the parties to make an interim application or interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
- (g) **Fees:** The arbitral tribunal's fees are left to be fixed by the learned Sole Arbitrator.
- (h) **Sharing of costs and fees:** All arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares.

2. The arbitration application is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)