

2. Learned Counsel for respondent No.1 has drawn the Court's

attention that although respondent Nos.2 and 3 are being impleaded as parties, respondent Nos.2 and 3 are guarantors under the independent contract of a guarantee as entered between the applicant and respondent Nos.2 and 3. It is also submitted that there is no independent invocation of the arbitration agreement against respondent Nos.2 and 3. Learned Counsel for the applicant fairly concedes to this position as also submits that the applicant would have an independent cause of action against respondent Nos.2 and 3 under their respective contracts. She states that her client would follow necessary procedure to invoke the arbitration agreement against respondent Nos.2 and 3 and if the need so arises, appropriate proceedings can be filed for appointment of an arbitral tribunal. She states that the contention of the applicant in that regard be expressly kept open.

3. Learned Counsel for respondent No.1 has stated that his clients would not have any objection for the disputes between the applicant and respondent No.1 be referred to arbitration without raising any objection on the nature of the invocation.

4. In the above circumstances and having recorded the consent on behalf of respondent no. 1 for the disputes to be referred to arbitration by appointing an arbitral tribunal, in my opinion, it would be in the interest of justice that the arbitral tribunal is appointed to adjudicate the

disputes and differences between the applicant and respondent No.1, however, keeping open the contentions of the applicant to invoke an arbitration subsequently in that regard against respondent Nos.2 and 3. The application is accordingly, disposed of in terms of the following order:-

ORDER

- (i) Mr. Shrinivas S. Deshmukh, Advocate is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Inventory Funding Agreement dated 6 December 2016.
- (ii) The learned sole arbitrator, 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 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;
- (iv) In so far as the contention of the applicant in regard to invocation of arbitration against respondent Nos.2 and 3, and any proceedings in that regard, are expressly kept open.

- (v) The fees payable to the arbitral tribunal shall be the fees as prescribed under the Bombay High Court (Fees payable to 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 on the following address:

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[G.S. KULKARNI, J.]