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Arb.O.P. (Com. Div.) No.637 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 19.12.2022**

**CORAM**

**THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY**

Arb. O.P. (Com.Div.) No.637 of 2022

M/s.Noma Infrastructure Private Limited,  
Represented by its Authorised Signatory,  
Mr.Kundan Gupta,  
No.612, 6<sup>th</sup> Floor, the Summit Business Bay,  
Andheri Kurla Road, Andheri East,  
Mumbai, Maharashtra – 400093.

...Petitioner

Vs.

Chemfab Alkalies Limited,  
'Team House', GST Road,  
Vandalur, Chennai – 600 048.

... Respondent

**PRAYER :** This Original Petition is filed under Section 11(4 & 6) of the Arbitration and Conciliation Act, 1996, praying to

(i)admit and allow the present petition and appoint a sole arbitrator, in accordance with the provisions of the Arbitration and Conciliation Act, 1996 to adjudicate upon the disputes / differences between the Petitioner and the Respondent under the Letter dated 24 September 2021;

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(ii) Award costs of the present petition in favour of the petitioner;

WEB COPY For Petitioner : Mr.Allwin Godwin

For Respondent : No appearance

### **ORDER**

This petition has been filed under Section 11 (4&6) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate upon the disputes / differences between the Petitioner and the Respondent under the Letter dated 24 September 2021.

2.The learned counsel for the petitioner submitted that the petitioner is a leading provider of transportation and multi modal logistics solutions for dry, liquid and gaseous cargoes globally, with a presence in more than 200 locations and is very well reputed in its industry. The petitioner provides state of the art logistics solutions to its clients across the globe and is an expert in handling both hazardous and non-hazardous cargo. During the course of its business, the respondent had sent an order to the petitioner by letter dated 24.09.2021 for movement of caustic soda lye from the respondent's plant in Kalapet, Puducherry to National Aluminium Company



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Limited (NALCO) plant in Damanjodi, Orissa. The petitioner has filed an additional typed set of documents dated 14.12.2022 wherein they have filed 16 invoices on various dates starting from 07.05.2021 to 14.03.2022 in terms of the contract for transporting the goods of the respondent and has filed the email communications between the petitioner and the respondent and a ledger account of the respondent's transactions from 01.04.2021 to 31.03.2022. As per the ledger account filed by the petitioner, the closing balance is Rs.83,15,603/-. Subsequent to the raising of the above said invoices, the petitioner has sent several remainders orally as well as through written and by emails to settle the dues of the petitioner. However, the respondent has not come forward either to settle the outstanding dues or to send any reply.

3.The learned counsel for the petitioner submitted that since the respondent has not come forward to settle the dispute and as this dispute arises out of the contract entered between the petitioner and the respondent on 24.09.2021, the petitioner has sent a letter dated 28.07.2022 calling upon the respondent to engage with the petitioner to mutually appoint a sole



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arbitrator to adjudicate the disputes between the parties under clause 28 of the contract, which is extracted as follows;

**“28) Arbitration**

*Any dispute rising out of this order or the interpretation thereof shall be referred to the arbitration of a sole arbitrator to be appointed by Chemfab Alkalies Limited, and shall be governed by the provisions of the arbitration and conciliation act, 1996. The venue of such arbitration shall be governed by the laws of India,*

*The order shall be, in all respects be construed and operated as an Indian Order and in accordance with Indian Laws as in force for the time being and all disputes arising out of this work order shall be subject to the jurisdiction of courts of Pondicherry, India.”*

4.By referring the above clause, the learned counsel for the petitioner submitted that though the clause states that a sole arbitrator can be appointed by the respondent, as per the Judgment of the Hon'ble Supreme Court of India in **“Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd.”** it is held that no party to a dispute shall be allowed to unilaterally



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appoint an arbitrator, even though the terms of the contract may entitle them to do the same. Hence, he called upon the the respondent for mutual appointment of the sole arbitrator. However, the respondent has not come forward and hence, the present petition has been filed. Notice has been served and the respondent has also entered appearance through his counsel. The learned counsel for the respondent submitted that the dispute between them and the petitioner arises out of the contract and the same can be settled through Arbitration and sought time for getting instructions from his client. However, today morning when the matter is called, there is no representation for the respondent. Hence, the matter has been passed over and it has been took in the post lunch session. However, none appeared for the respondent.

5.It is seen from the records that the respondent has approached the petitioner for movement of goods from Puducherry to Orissa by contract dated 24.09.2021 and he has filed various invoices and ledger account regarding the transportation of the said goods and as per the ledger account, the closing balance is Rs.83,15,603/-. Though the petitioner has sent various communications, the respondent neither came forward to settle the dispute



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nor send any reply. Hence, the present petition has been filed and after service of notice, the respondent appeared and agreed for referring the matter to mediation and sought time to get instructions from his client. However, when the matter is called today, none appeared for the respondent. It shows that it is only to protract the matter further and this Court do not want to give any chance to delay the matter. Since the dispute squarely falls within the purview of clause 28 of the contract dated 24.09.2021 and since, it has been stated that though the said clause states that a arbitrator can be appointed by the respondent, in view of the law laid down by the Hon'ble Supreme Court of India that no party to a dispute shall be allowed to unilaterally appoint an arbitrator, the request has been made to the respondent to mutually appoint an arbitrator. However, the respondent has not come forward. In these circumstances, on being satisfied with the submissions made by the learned counsel for the petitioner and on considering the above facts, this Court feels it appropriate to pass the following order:

i) Mr.R.Ravikumar, Advocate, No.14, Pillayar Koil Street, Thengaithittu, Mudaliarpeta Post, Puducherry- 605 004 Contact No.94437 44379 is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the



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parties.

ii)That the learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iii)That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

iv)That the learned Sole Arbitrator appointed herein shall decide the matter on merits without being influenced or inhibited by any of the observations made in the order of this Court.”

6.This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

**19.12.2022**

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order



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*Note:* Office to issue order copy on 22.12.2022

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Copy to

Mr.R.Ravikumar, Advocate,  
No.14, Pillayar Koil Street,  
Thengaithittu, Mudaliarpeth Post,  
Puducherry- 605 004,  
Contact No.94437 44379.



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**KRISHNAN RAMASAMY, J.**

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