

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPLICATION NO.16 OF 2022

**INFINITY CORRUGATION THROUGH PROPRIETOR ADITYA
SHARADCHANDRA PANDIT
VERSUS
M/S UMESH BOARD AND PAPER MILLS PRIVATE LIMITED AND
OTHERS**

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Advocate for Applicant : Mr. Aditya N. Sikchi
Advocate for Respondent No.1 : Mr. G.K. Naik Thigle
Advocate for Respondent Nos.2 &3 : Mr. Shriniwas A. Kulkarni

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 06th JULY, 2023

PER COURT :

1. By this petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, the applicant seeks appointment of arbitrator as per clause 9 of the Memorandum of Understanding dated 16/03/2021 and referral of the dispute to the arbitrator.

2. Heard learned advocate for applicant, learned advocate for respondent No.1 and learned advocate for respondent Nos. 2 and 3. Perused the memo of arbitration application, annexures thereto and the citations relied upon by the respective parties.

3. Memorandum of Understanding is executed on 16/03/2021 between the applicant and respondents. Clause 9 of

the same provides for referral of the dispute to arbitration. On 25/06/2021, notice was issued by the applicant to the respondents invoking arbitration clause in the Memorandum of Understanding and requesting for appointment of arbitrator for resolving the dispute. By reply notice dated 19/07/2021, respondent No.1 denied the contention of applicant that goods purchased in pursuance of Memorandum of Understanding is not as per fair value and having less quantity and does not have necessary ledger bills attached thereto. It is claimed that imaginary dispute is sought to be raised by the applicant and the same does not pertain to Memorandum of Understanding.

4. Having heard learned advocate for applicant, learned advocate for respondent No.1 and learned advocate for respondent Nos.2 and 3, this Court is of the view that, *prima facie*, the dispute is made out in the notices exchanged by the parties and in terms of clause 9 of the Memorandum of Understanding, the same needs to be referred for arbitration. Arbitration application, therefore, deserves to be allowed.

5. Learned advocate for respondent No.1 by relying on Section 23(2)(A) of the Arbitration and Conciliation Act, submits that he may be permitted to file counter claim, if any. The right given under Section 23(2)(A) is a statutory right which respondents

are entitled to exercise and it is not necessary to observe anything in that behalf in the present order. He further submits that point of arbitrability of the dispute and limitation may be kept open to be agitated before the arbitrator under Section 16.

6. In view of aforesaid reasons, arbitration application is allowed, by keeping point of limitation and arbitrability of dispute open. With the consent of parties, learned advocate Mr. Girish Wani is appointed as arbitrator to decide the dispute between the parties.

(NITIN B. SURYAWANSHI, J.)