



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

1 ARBITRATION APPLICATION NO. 21 OF 2023

BELRISE INDUSTRIES LIMITED THROUGH ITS AUTHORIZED
REPRESENTATIVE MR. VIJAY PATIL

VERSUS

AMIT ENGINEERS AND TOOLS PRIVATE LIMITED

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Advocate for Applicant : Mr. R.R.Totala i/b Mr. S.V.Lohiya a/w Mr.
Yadav G. S.

Advocate for Respondents : Mr.Amit Yadkikar i/b Mr. Kulkarni A.D.

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CORAM : ARUN R. PEDNEKER, J.

Dated : January 15, 2024

PER COURT :-

1. By the present application under Section 11 of the Arbitration and conciliation Act, 1996 the applicant seeks an order from this Court for appointing the third Arbitrator, so as to complete the constitution of the Arbitral Tribunal. Two nominee arbitrators are appointed by each party as per Clause 27 of the General Terms and Conditions of the Purchase Order dated 23rd October, 2018.

2. Clause 27 of the Purchase order/Agreement reads as under :-

"In case of any dispute or difference arising out of the contract which cannot be resolved mutually between the Company and the Supplier, it shall be referred within 30 days of notice of Arbitration to a Team of Arbitrator which comprise of three Arbitrator, one Arbitrator to be

appointed by the Company one Arbitrator to be appointed by the Supplier and one Arbitrator to be appointed mutually by both the parties.

The Arbitrator shall give a reasoned and speaking award. The award of the Arbitrator shall be binding on both the Parties. The venue of Arbitration shall be at Aurangabad Maharashtra. In case of any vacancy, the vacancy shall be filled in the same manner as above. The Arbitration and Conciliation Act, 1996 and rules made there under apply to the Arbitration Proceedings."

3. In pursuance of the dispute that arose under the Agreement dated 23/10/2018 a legal notice was issued towards the claim of the petitioner. The petitioner filed an application thereafter under Section 9 of the Act before the Hon'ble District Court Aurangabad in Civil Misc. Application No.157 of 2023 seeking certain interim reliefs. The respondent agreed to the certain claim of the petitioner and accordingly the application under Section 9 of the Act was withdrawn.

4. Thereafter, on 13/07/2023 the petitioner issued a notice invoking arbitration in respect of the claim for the advance returnable and accordingly nominated Mr. Justice Pratap Vishnu

Hardas (Retd.) as nominee arbitrator. The respondent by its reply, nominated Mr. Justice Sunil P. Deshmukh (Retd.) as its arbitrator. The two arbitrators so nominated were unable to appoint the third arbitrator for the reason that the Arbitration Clause provided for appointment of the third arbitrator by mutual agreement of the parties to the Agreement and not by the nominee arbitrators. Therefore, the petitioner suggest the name of one of the Retired Judge of this Court as the 3rd Arbitrator. The respondent has not responded to the letter dated 29/08/2023. As such, the present application is moved for appointment of the 3rd Arbitrator.

5. The parties have agreed to appoint Mr. Justice Naresh H. Patil for Arbitration of the disputes in terms of the Agreement dated 23/10/2018 between the parties. Accordingly, the arbitration application is disposed of with following order :

a] **Appointment of Arbitrator :-**

Mr. Justice Naresh H. Patil, is appointed to act as the third arbitrator (Presiding Arbitrator) to adjudicate upon the disputes between the parties.

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 the date this order is 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 post and email addresses :

Arbitrator	:	Mr. Justice Naresh H. Patil
Address	:	Rajgir Chambers, Office No.63, 7 th Floor, Opp. Old Custom House Fort, Mumbai 400001.
Phone No.	:	9422210444
Email	:	nareshhpatil7@gmail.com

c] **Disclosure :**

The learned Sole Arbitrator is requested to forward the necessary statement of disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Registrar of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently before entering upon the reference to arbitration. That statement will be retained by the Registrar 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 the learned Sole Arbitrator nominates and the parties to obtain appropriate directions from the arbitrator 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 address.

f] **Section 16 application :**

The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

g] **Interim Application/s :**

(i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.

(ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

h] **Fees :**

The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

i] **Sharing of costs and fees :**

Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.

J] **Venue and seat of arbitration :**

Seat of the arbitration would be governed by the provisions of the agreement executed between the parties.

(ARUN R. PEDNEKER, J.)

vj gawade/-.