

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO. 149 OF 2024

Sany Heavy Industry India Pvt. Ltd. ... Applicant

V/s.

Rajkumar Panditrao Divekar and Anr. ... Respondents

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AND

ARBITRATION APPLICATION NO. 153 OF 2024

Sany Heavy Industry India Pvt. Ltd. ... Applicant

V/s.

Yarlagadda Phaneendra Kumar and Anr. ... Respondents

AND

ARBITRATION APPLICATION NO. 155 OF 2024

Sany Heavy Industry India Pvt. Ltd. ... Applicant

V/s.

Yashwant Singh Raghuwanshi and Anr. ... Respondents

Ms. Bijal Gogri i/b. GNP Legal for the Applicant

CORAM : FIRDOSH P. POONIWALLA, J.

DATE : 14 December 2024.

P.C. :

1. These Applications have been filed under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (the Act) for

appointment of an Arbitrator to arbitrate upon the disputes and differences arising between the parties under the Facility Agreement dated 5 May 2020 entered into between the parties.

2. Clause 23 of the Facility Agreement contains the Arbitration Clause.

3. Subsequently, by an amendment to the Facility Agreement dated 30 September 2021, Clause 23 was amended. The amended Clause 23 reads as under :-

“ 1. Amendment No.1

Clause 23 of the Facility Agreement is replaced in its entirety by the following :

“ Any dispute arising out of or in connection with this contract including its existence, validity, interpretation or termination shall be referred to Arbitration to be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996, together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. Each party shall nominate and appoint its Arbitrator within a period of ten (10) days from the date of receipt of notice for invocation of Arbitration proceeding by the claimant and the Arbitrators shall appoint the Presiding Arbitrator. The Seat of Arbitration shall be in Pune and the language of Arbitration proceeding shall be English. The Seat of Arbitration shall be in Pune and the language of Arbitration proceeding shall be English. The Award passed by the Tribunal shall be final and binding upon the parties. The cost of arbitration proceeding shall be borne by the parties equally.”

4. Subsequently, on account of the default of the Respondents in payment, disputes and differences have arisen between the parties, and by letter dated 26 February 2024, the Applicant has invoked Arbitration in terms

of the said amended Clause 23, has nominated an Arbitrator and requested the Respondents to nominate their Arbitrator.

5. The Respondents, though served, have not appeared.
6. I have heard the learned Counsel for the Applicant.
7. There exists a valid Arbitration Agreement between the parties as contained in amended Clause 23 of the Facility Agreement. Disputes and differences have arisen between the parties. The Applicant, by its Notice dated 26 February 2024, has invoked Arbitration.
8. In these circumstances, an Arbitrator will have to be appointed in order to arbitrate upon the disputes and differences arising between the parties under the said Facility Agreement.
9. Accordingly, the following order is passed :-
 - (a) Mr. S.G. Nandimath, Retired District Judge, is appointed to arbitrate upon the disputes and differences arising between the parties under the Facility Agreement dated 5 May 2020 in all the three Applications. The contact details of Mr. S.G. Nandimath, who is appointed as an Arbitrator, are as under :-

Mr. S.G. Nandimath

Mobile No. 9421511829

Email Id : shivayyanandimath@gmail.com

Office Address : C/o. Abhay A. Mandhare,
B-1201, Prathamesh Elite, Chandni
Chowk, Kothrud, Pune - 411038

(b) The Advocates for the Applicant shall intimate the Arbitrator about his appointment within a period of one week from the date of uploading of this order;

(c) In addition, the Office of the Prothonotary and Senior Master of this Court shall also intimate the Arbitrator about his appointment within a period of one week from the date of uploading of this order.

(d) The Arbitrator so appointed to make the disclosure as required under the provisions of the Act within a period of one week from the date of intimation of his appointment.

(e) The Arbitrator shall charge fees as per the Rules framed by this Court in that regard.

10. The Arbitration Applications are disposed of in the aforesaid terms. There will be no order as to costs.

(FIRDOSH P. POONIWALLA, J.)