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IN THE HIGH COURT OF BOMBAY AT GOA**APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO.16 OF 2024**

MR AVINASH TIWARI,
Proprietor of Prism Enterprises,
44 years of age, r/o Villa No.2,
Rangavi Estate (QE),
Alto Dabolim, Goa 403 801.

... APPLICANT

Versus

INSTITUTE OF PETROLEUM,
SAFETY, HEALTH & ENVIRONMENT
MANAGEMENT, OIL & NATURAL
GAS CORPORATION LTD.,
through its Principal Officer/
Authorized representative, having
office at Betul, South Goa 403723.

... RESPONDENT

Ms Annelise Fernandes, Advocate for the Applicant.
Mr J. A. Lobo, Advocate for the Respondent.

CORAM: VALMIKI MENEZES, J.**DATED: 4th JULY 2025****P.C. :**

1. The above Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act") seeking the constitution of the Arbitral Tribunal to decide the disputes and differences arising out of the Annual Maintenance Contract dated 20.03.2023.
2. The Petitioner, by notice dated 27.06.2024 had communicated its desire to appoint an Arbitrator for deciding the

dispute referred to therein which was opposed by the Respondent in its communication dated 27.06.2024. The respondent contended that the contract has been terminated on 29.05.2024 since the same was signed on the basis of certain forged documents. The respondent has relied upon a show cause notice and various communications between the parties to contend that there is no contract between the parties nor any dispute that is arbitrable. Since there was no consensus between the parties, on whether the dispute was arbitrable, the present application has been filed before this Court.

3. The respondent further contends that the arbitral clause contained in the Annual Maintenance Contract dated 20.03.2023 would not operate between the parties since the Petitioner despite having knowledge of the arbitration clause, in absolute abuse of process chose to file applications before the Ministry of Micro, Small & Medium Enterprises (MSME) for the same dispute. It was further submitted by the Respondent that the Petitioner can seek remedy either by appointment of arbitrator or through MSME forum; There cannot be two dispute resolution forums simultaneously sought to agitate the dispute.

4. All contentions raised by the respondent to oppose the application would be matters within the realm of Section 16 of the Arbitration Act, since the arbitrator has the jurisdiction to adjudicate upon his own jurisdiction, including whether he has the jurisdiction under arbitration clause. There is an arbitration clause between the parties as reflected in clause 27 of the Contract.

5. In these circumstances, the following order is passed :-

(A) Mr. Justice Bharat P. Deshpande, a Retired Judge of this Court, is appointed as the Sole Arbitrator to decide upon the disputes and differences between the Applicant and the Respondent arising out of and/or in connection with and/or in relation to the Annual Maintenance Contract dated 20.03.2023..

(B) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocate for the Applicant within a period of one week from today.

(C) The learned Sole Arbitrator is requested to forward his Statement of Disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Advocate for the Applicant so as to enable him to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent.

(D) The parties shall appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(E) Contact and communication particulars shall be provided by both sides to the learned Sole Arbitrator within a period of one week from today. This information shall include a valid and functional email address as well as the mobile numbers of the respective Advocates.

(F) The Sole Arbitrator shall charge his fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee payable to Arbitrators) Rules, 2018. All the arbitral costs and the fees of the Arbitrator will be borne by the Applicant and the Respondent equally and will be subject to the final Award that may be passed by the Tribunal.

(G) The parties have agreed that the seat of the arbitration will be in Panaji, Goa, and the venue shall be as per the directions of the arbitrator.

6. The Application is disposed of in the aforesaid terms. There shall be no order as to costs.

7. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by email of a digitally signed copy of this order.

VALMIKI MENEZES, J.