

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**APPLICATION FOR APPOINTMENT OF ARBITRATOR**  
**NO.7 OF 2017**

Hardesh Ores Pvt Ltd	... Applicant
<i>Versus</i>	
Mineira Nacional Limitada	...Respondent

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**Mr P Rao**, *Advocate for the Applicant.*  
**Mr AD Bhobe**, *Advocate for the Respondent.*

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**CORAM: G.S. PATEL,J**  
**DATED: 29th September 2017**

**PC:-**

1. This is an application for appointment of an Arbitral Tribunal. It is brought under Section 11 read with Section 15 of the Arbitration and Conciliation Act, 1996.

2. There was an agreement between the parties dated 10th April 1986. The Applicant filed a suit under Section 20 of the old Arbitration Act, 1940 before the Civil Court. In that suit, consent terms were filed on 18th August 1995 and a consent decree was taken on 2nd September 1995. By that decree, all disputes and differences under the 1986 agreement were referred to an Arbitral Tribunal. In 2004, further disputes arose also under the 1986 agreement. These were referred to a separate Arbitral Tribunal though under 1995 agreement.

3. On 2nd December 2009 the parties entered into a second agreement and this specifically referred all disputes to an Arbitral Tribunal comprising of Justice B. N. Srikrishna, retired Judge of the Supreme Court of India, Mrs Justice KK Baam, retired judge of the Bombay High Court and Mr Ashok Mody, senior counsel and former additional judge of Bombay High Court. The parties agreed in the 2009 agreement that 1995 consent decree be modified. This was provided for. The parties then went to arbitration before the Tribunal. It seems that in June 2010 there was yet more disputes and these were also referred to the three-member Tribunal headed by Mr Justice Srikrishna.

4. It does not seem to be in dispute that the Arbitral Tribunal so appointed did enter upon the reference and these proceedings culminated in set of awards dated 19th October 2015. The Respondents opposed the Applicant's claim for a renewal of the agreement or its extension from 30th June 2010 to 30th June 2016. The Tribunal held that the Applicant had a right of renewal and that the agreement stood renewed. On 1st March 2016 the Applicant exercised its renewal option under the 1987 agreement for a further period of six years till 30th June 2022. On 1st July 2016 the Applicant intimated the Respondents that further disputes were also required to be referred to the three members arbitral tribunal headed by Mr Justice Srikrishna. On 1st July 2016, the Applicant wrote back to the Tribunal. It seems that the three members however declined to act and conveyed their decision to that effect by separate letters. Copies of these are annexed. The result is that on the fresh application for renewal and the fresh claim for reference to arbitration there is now no Arbitral Tribunal.

5. The parties are agreeable to refer their disputes to a sole arbitrator but have left the choice of arbitrator to this court. In my view, given the long history of disputes, it would be appropriate if reference is made to a sole arbitrator. I nominate and appoint Shri R.G. Ramani, learned Advocate of this Court, as a sole arbitrator, subject to his consent. The parties are requested to obtain his formal declaration and disclosure statement as required by the amended Act and to have same placed on file.

6. The parties will bear and pay all costs of the arbitration including arbitrator's fees equally. Shri Ramani is requested to call a meeting on a date of his convenience for preliminary directions. All contentions are specifically left open. It is also clarified that the reference to arbitration is of the disputes mentioned in the letter dated 1st July 2016.

**G. S. PATEL, J**