

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

**ARBITRATION APPEAL NO. 02 OF 2017
WITH
CIVIL APPLICATION NO. 3452 OF 2017**

Shri Vitthal Sahakari Sakhar Karkhana Ltd... Appellant
Through its Managing Directors,
R/o. Venu Nagar, at post Gursale,
Taluka Pandharpur,
Dist. Solapur.

Versus

Rajlaxmi Petrochem Pvt. Ltd. .. Respondent
Private Limited Company
Through its Director
Dineshkumar s/o. Murlidhar Innani,
Age. 45 years, Occ. Business,
R/o. Main Road, Beside Latur General
Stores, Latur.

Mr.N.B. Khandare, Advocate for the appellant.
Mr.Swapnil S. Rath, Advocate for sole respondent.

**CORAM : T.V. NALAWADE,J.
DATED : 20.04.2017**

ORAL JUDGMENT :-

1. Heard both the sides.
2. Admit.

3. This Arbitration Appeal is filed against the order made below Exh.15 dated 13.01.2017 in Civil M.A. (Arb.) No.245 of 2016 by the learned Principal District Judge, Latur. The application was filed under section 9 of the Arbitration and Conciliation Act, 1996. The present appellant has filed written statement, though the learned Principal District Judge, Latur, has observed that no separate reply is filed to the interim application. After hearing both the sides, the learned Principal District Judge, Latur, has restrained the appellant/Co-operative Sugar Factory from selling the molasses.

4. There is agreement between the appellant and the respondent and under the agreement the appellant has agreed to supply 100 lakh liters Special Denatured Spirit (SDS) to the respondent. Though there was initially agreement of supply of 100 lakh liters, some amount was withdrawn. But the learned Counsel for the respondent submitted that under the agreement, still the appellant

will be required to supply 100 lakh liters of aforesaid material and as on today quantity of around 48 lakh liters is supplied. The distillery was not working with full capacity due to shortage of supply of sugarcane and so as per the agreement expected quantity is not supplied. The submission is made that in this year the distillery unit came to be closed in the month of January 2017 due to shortage of supply of sugarcane. The submissions made show that around 150 MT of molasses is lying in the factory premises and value of molasses is around Rs.56 lakh. It is grievance of the respondent that this molasses could have been utilized for producing SDS, but it was not done intentionally and the sugar factory wants to sell the molasses to make money by committing breach of contract. There is clear probability that it was not practicable to keep functioning the unit with such small quantity of molasses.

5. The submissions made show that due to short

supply of SDS, in the past in the year 2016, notice was given as per the agreement by the respondent and intention was expressed to appoint the Arbitrator. This notice was not replied by other side. No steps were taken by the respondent for appointment of the Arbitrator. The application under section 9 was filed in the District Court in the year 2016 and the interim order came to be made on 13.01.2017. In view of provisions of section 9 (2) of the Arbitration Act, the respondent needs to take further steps to go for the appointment of Arbitrator. Learned Counsel for the respondent submitted that respondent is going to take steps immediately, but till then the interest of the respondent is required to be protected.

6. The learned Counsel for the sugar factory submitted that during this season when temperature has crossed 40°C, it will be hazardous to keep such quantity of molasses in the factory premises and any untoward incident may happen. This Court holds that this

possibility cannot be ruled out. However, the interest of the respondent also needs to be protected. The learned Counsel for the respondent submits that at least an amount of more than Rs.5 Crore of the respondent is with the present appellant, so to that extent interest of the respondent needs to be protected. It is not disputed that the amount of the respondent is with the appellant. In view of these circumstances, this Court holds that in the present matter some alternate way can be chosen and sale proceeds of molasses can be directed to be deposited in the District Court, where proceeding under section 9 of the Act is still pending.

7. In the result, the order made by the learned Principal District Judge is hereby modified by following order :-

. Present appellant — Shri Vitthal Sahakari Sakhar Karkhana Ltd., is hereby allowed to sell the molasses as per law and the amount is to be deposited immediately with the record

of sale in the District Court. If there is breach of order, action will be taken against the appellant. Such undertaking also to be given in the District Court by the applicant before proceeding with the sale.

8. With the above directions the arbitration appeal is allowed and disposed of.

9. In view of disposal of the Arbitration Appeal, connected Civil Application for stay does not survive and stands disposed of.

[T.V. NALAWADE, J.]