

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION APPLICATION NO.154 OF 2017**

Allana Cold Storage Pvt. Ltd. ... Applicant
versus
A1 Mafko Frozen Foods Pvt. Ltd. ... Respondent

Mr. Shrivardhan Deshpande with Ms. Ishita Advani i/by M/s. Desai and Diwanji for the Applicant.
Mr. Jayant Kutardikar i/by Mr. Abhijit Desai, for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 1st MARCH, 2018

P.C.:

1. The learned Advocate for the Respondent undertakes to file Vakalatnama on behalf of the Respondent within one week from today. The undertaking is accepted.
2. The Applicant – A1 Mafko Frozen Foods Pvt. Ltd., has filed the above Arbitration Application against the Respondent under Section 11 of the Arbitration and Conciliation Act, 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015 (the Act) for appointment of a sole Arbitrator to resolve the disputes that have arisen between the parties under the Agreement dated 23rd July, 2013 (Exhibit A to the Application).
3. The Applicant is a Company interalia engaged in the business of manufacturing, sale and export of frozen buffalo meat/offal. The Respondent is a Company interalia engaged in the business of manufacturing, sale and marketing of

processed meat and other agri-products. According to the Applicant, an Agreement dated 23-07-2013 was executed by and between the Applicant and Respondent, under which the Respondent has agreed to provide its meat processing plant situated at 7-30-310, Khoja Colony Road, Itwara, Nanded – 431604 (hereinafter referred to as the Plant) to the Applicant on a third party manufacturing basis for manufacturing of frozen buffalo meat/offal for and on behalf of the Applicant on the terms and conditions more particularly set out in the Agreement. A copy of the Agreement dated 23-07-2013 is annexed and marked as Exhibit A to the Application.

4. The arbitration clause contained in the Agreement dated 23-07-2013 is reproduced hereunder :

“In the event of failure to arrive at an amicable settlement within a period of 30 (thirty) days, the disputes shall be settled by a Sole Arbitrator to be appointed with the mutual consent of the Parties to this Agreement pursuant to the provisions of Arbitration and conciliation Act, 1996. Arbitration shall be held in Mumbai, India. The language of the proceedings shall be English. The Award passed by the Sole Arbitrator shall be final and binding on both the parties”.

5. Since disputes arose between the parties, the Applicant by a letter dated 10-08-2017 terminated the Agreement with the Respondent. On 18-08-2017, the Applicant sent a letter to the Respondent and invoked the Arbitration Clause and suggested three names of Advocates who could be appointed as a sole arbitrator to

adjudicate the disputes between the Applicant and the Respondent. Despite receipt of the said letter, the Respondent did not respond to the same. The Applicant was therefore constrained to file the above Arbitration Application seeking appointment of the Sole Arbitrator.

6. The Respondent has filed his first Affidavit in Reply on 15-02-2018 and has thereafter filed another Affidavit trying to improve its case. In the first Affidavit, Respondent has admitted that there is an Arbitration Clause in the agreement, but has proceeded to say they had signed the agreement which was prepared by the Applicant and they were not allowed to read the Agreement. However, it is also stated by the Respondent in its Affidavit that if the Court is inclined to appoint an Arbitrator, the Court may appoint a Senior Advocate from Nanded and the proceedings be held at Nanded.

7. From the aforesaid facts, it is clear that there exists an arbitration Agreement between the parties. I see no substance in the submission sought to be raised by the Advocate for the Respondent that if the arbitrator is appointed, he should be a Senior Advocate from Nanded. In view of the specific agreement between the parties that the arbitration proceedings shall be held at Mumbai, the question of accepting the submission of the Respondent does not arise. In view thereof, the following order is passed :

(i) The Court proposes to appoint Mr. Karl Tamboly, Advocate as a sole

Arbitrator to decide the disputes between the Applicant and Respondent arising out of the Agreement dated 23-07-2013 (Exhibit A to the Application). In view thereof, Mr. Karl Tamboly, Advocate, shall file his disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016).

(ii) Stand over to 3.00 p.m.

(S.J.KATHAWALLA, J.)