

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2 OF 2019
IN
ARBITRATION PETITION NO.138 OF 2017**

M/s. Katmandu Apparel Pvt. Ltd.	...	Applicant
and		
M/s. Organic Gardens Pvt. Ltd.	...	Petitioner
versus		
M/s. Sampurna Veggie and Fruits Enterprises	...	Respondent

Ms. Ayesha Damania with Mr. S.V.Chaugule, for Applicant.
Mr. Dushyant Kumar with Ms. Shweta Iyengar I/by M/s. Themis Legal, for Respondent.

CORAM: S.J. KATHAWALLA, J.

DATE: 25th JANUARY, 2019

P.C.:

1. The above Civil Application is taken out by the Applicant/Original Petitioner to amend the cause title and pleadings in Arbitration Petition No.138 of 2017 so as to show the Applicant as successor in interest of Organic Gardens Pvt. Ltd., the Original Petitioner. The Original Petitioner – M/s. Organic Gardens Pvt. Ltd., had invoked arbitration clause by sending a notice dated 26th September, 2014 to the Respondent. Thereafter, Organic Gardens Pvt. Ltd., filed Arbitration Petition No.32 of 2015 under Section 11 of the Arbitration and Conciliation Act, 1996. On 29th January, 2016 an order was passed in the said Arbitration Petition No.32 of 2015 under Section 11 of the said Act, appointing Advocate Sanskar Marathe as Arbitrator. The

above Petition was accordingly disposed of. On 18th March, 2016 Organic Gardens Pvt. Ltd., filed its statement of claim before the learned Arbitrator. On 25th April, 2016, the Company Scheme Petition Nos.436 and 437 of 2016 were filed by Organic Gardens Pvt. Ltd. (Transferor Company) and the Applicant M/s. Katmandu Apparel Pvt. Ltd. (Transferee Company) respectively for the scheme of Amalgamation under Section 391 to 394 of the Companies Act, 1956. On 15th June, 2016 the Respondent filed written statement and counter claim before the learned Arbitrator. On 13th October, 2016 an order in the Company Scheme Petition Nos.436 and 437 of 2016 was passed allowing the amalgamation between Organic Gardens Pvt. Ltd. & Katmandu Apparel Pvt. Ltd. At this stage, the Applicant ought to have informed the learned Arbitrator about the order passed in the said Company Scheme Petitions and ought to have amended the pleadings and substitute the name from Organic Gardens Pvt. Ltd., to Katmandu Apparel Pvt. Ltd. The Applicant failed to do so and have thereafter continued the proceedings in the name of Organic Gardens Pvt. Ltd., so much so that the Arbitration Petition No.138 of 2017 was filed under Section 15 of the Act and an order was obtained therein on 3rd November, 2017 in the name of Organic Gardens Pvt. Ltd., and not Katmandu Apparel Pvt. Ltd. The proceedings before the new Arbitrator appointed by this Court also continued under the name of Organic Gardens Pvt. Ltd., until the learned Arbitrator was informed for the first time on 8th March, 2018 about the amalgamation and therefore, The present Application is taken out to

allow the Applicant to substitute their name in place of Organic Gardens Pvt. Ltd.

2. Though the learned Advocate for the Respondent have opposed the above Civil Application, I am of the view that the change in name was not brought on record due to inadvertence and sheer negligence of a Director of the Company who was attending to the legal matters. In view thereof, the Civil Application is allowed subject to payment of costs of Rs.25,000/- to be paid to the Respondent within a period of one week from today. It is made clear that if any Application is taken out by the Applicant seeking extension of time under Section 29(A) of the Arbitration and Conciliation Act, 1996, the same shall be decided on its own merits and all contentions of the parties are kept open.

3. The Civil Application is accordingly disposed of.

(S.J.KATHAWALLA,J.)