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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION (L) NO. 416 OF 2019

Ashok Alco-chem Ltd ...Applicant
Versus
Shri Shankar Sahakari Sakhar Karkhana Ltd ...Respondent

Mr Rushabh Seth, *i/b MS Bodhanwalla & Co, for the Applicants.*
Mr Abhijeet Kulkarni, *with Mr Sachin Hande, for the Respondent.*

CORAM: G.S. PATEL, J.
DATED: 6th November 2019

PC:-

1. The Application is under Section 11 of the Arbitration and Conciliation Act 1996. The parties entered into an Agreement dated 17th August 2015. A copy is at Exhibit "A" from pages 16 to 27. Clause 14 of the Agreement contains the arbitration agreement. All disputes and differences in this broadly worded clause are to be referred to a sole Arbitrator.

2. The Respondent manufactures and sells Specially Denatured Spirit Grade I and Grade II derived from molasses. Its factory is in District Solapur. Even earlier, the Applicant would procure this raw material from the Respondent. The Applicant uses it as raw material in the manufacture of chemical products. According to the Applicant, the practice was that these supplies were made by the

Respondent against advances paid by the Applicant in terms of Agreements periodically executed between them.

3. The Agreement of 17th August 2015 required the Respondent to supply these goods at a rate specified in the Agreement. Although a minimum quantity was stated, the aggregate quantity was not, and it is therefore not possible to ascertain from a plain reading of the contract the aggregate value of the contract itself.

4. The complaint is that despite these advance payments being made, the Respondent's supplies were irregular. There is yet a balance amount of 235 kilolitres pending delivery across this and an associated contract and the estimated value of this amount is in excess of Rs. 77 lakhs. The Application itself recites that the Respondent gave the Applicant two cheques in the aggregate amount of Rs. 80,84,079/- but these were returned unpaid for insufficient funds. The Applicant issued a legal notice on 14th June 2017 making a demand for this amount and also demanding payment or supply of the raw material.

5. According to the Applicant there is an amount of a little under Rs. 25 lakhs due under the subject contract. There is a second contract which is the subject matter of a separate Arbitration Application.

6. It is in these circumstances that the Application is made for the appointment of an Arbitrator. There is an Affidavit in Reply filed by the Respondent taking several contentions. The generally worded submission that the document is insufficiently stamped, citing the recent Supreme Court decision in *Garware Wall Ropes Ltd v Coastal Marine Constructions & Engineering Ltd*,[1] will not assist simply because it is an accepted position that from the terms of the contract it is not possible to determine the aggregate value of the contract, and, besides, the Respondent is unable to say under what particular article or section of the Stamp Act such an Agreement can or should be assessed or adjudicated to stamp.

7. There are other submissions in opposition, including whether the requirements of Section 164 of the Maharashtra Cooperative Societies Act are mandatory in a situation like this. That is of course a matter that can be dealt with by the Arbitrator and falls entirely within the conspectus of Section 16 of the Arbitration Act. The other submissions are as to the nature of the contract itself, i.e. whether it is contingent, whether such contingency has arisen, whether it is enforceable, and whether it contravenes public policy. All these are similarly matters that would fall for consideration by the Arbitral Tribunal.

8. In my view there is no reason to refuse relief. The existence of the Arbitration Agreement is not denied. The question of enforceability is entirely distinct.

9. Having regard to these circumstances, I appoint Mr Rohan Rajadhyaksha, learned Advocate of this Court as the sole Arbitrator

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1 2019 SCC OnLine SC 515.

to decide the disputes between the parties arising out of the Agreement dated ***17th August 2015***.

10. Mr Rajadhyaksha will forward his statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act 1996 to the Prothonotary and Senior Master who will retain it on the file of this Application and provide copies to both sides.

11. The parties themselves or through their Advocates will appear before the learned sole Arbitrator on such date he may determine to obtain necessary directions.

12. All contentions are left open.

13. The learned Arbitrator will decide the sharing of fees and costs between parties.

14. The Arbitral Tribunal's fees shall be prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules 2018.

15. The venue of the Arbitration shall be at Mumbai which is also the provision in the contract itself.

16. The Arbitration Application is disposed of in these terms. No order as to costs.

17. The Affidavit in Reply will need to be substituted. It is improperly affirmed. That is to be done within two weeks from today. The present Affidavit in Reply is returned without being taken on record, with leave to file afresh. A copy of the reaffirmed Affidavit will be served on the Advocates for the Petitioner. I have proceeded on the basis of the Affidavit shown to me. It is only the affirmation that is incorrect. The contents are not to be changed.

(G. S. PATEL, J)

Note: This order is modified as per the order dated 11th November 2019 passed on a praecipe for speaking to the minutes. The corrections are shown in Bold and Italics.