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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO.8 OF 2019

Sustainable Agro-commercial Finance Limited ..Applicant

Vs.

Parameshwar Ramchandra Ghodake ..Respondent

Mr.Yashpal Thakur for Applicant.

CORAM : G.S. KULKARNI, J.

DATE : 2nd APRIL, 2019

P.C.:

1. Heard learned Counsel for the applicant.
2. On 5 March 2019 this Court had passed an order permitting learned Advocate for the applicant to serve the respondent by private service and place on record an affidavit of service. As also a notice of this Court came to be issued to the respondent returnable on 2 April 2019.
3. An affidavit of service is placed on record on behalf of the applicant inter-alia stating that the respondent has personally received the notice of this proceeding on 22 March 2019. There is an office report dated 1 April 2019 with a remark that after verifying postal

website, the postal authorities have received remark that the receipt of postal delivery is refused. In the circumstances, it would be required to be considered that the respondent is appropriately served with the notice of this proceeding. Accordingly, application is taken up for hearing.

4. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby the applicant has prayed for appointment of an arbitral tribunal for adjudication of the disputes which are stated to have arisen between the parties under the loan cum hypothecation agreement dated 27 March 2014. Clause 28 of the said agreement is the arbitration agreement between the parties which reads thus:-

“28. Dispute Resolution: In the event of any dispute or controversy that may arise from or relating to the remittance, operations or from the interpretation or implementation of this Agreement, the parties hereto undertake to first endeavour to resolve such dispute or controversy amicably through conciliation, within thirty (30) days from the date when such dispute or controversy arises. Unresolved disputes arising out of or relating to this agreement or the arrangement agreed to herein shall be referred to arbitration of a Sole Arbitrator jointly appointed by both the parties. The place of arbitration proceedings shall be at Mumbai and proceedings to be conducted in English. The proceedings shall be conducted in accordance with the Indian Arbitration and Conciliation Act, 1996 as amended from time to time. The Award of the Arbitrator shall be final and binding on both the parties. Parties to bear the respective cost and cost of the arbitration proceedings shall be shared.”

5. The case of the applicant is that a term loan facility in aggregate value of Rs.5,95,989/- was disbursed to the respondent as set out in the body of the application. The respondent consistently defaulted in making payment of the installments of the said financial facility as made available by the applicant. The applicant accordingly issued a notice dated 24 November 2017 recalling the loan amount and called upon the respondent to make payment of Rs.10,64,954/- due and payable on the date of the notice. It is the case of the applicant that the installment cheques which were issued by the respondent came to be dishonoured. The applicant accordingly addressed a notice dated 13 August 2018 to the respondent invoking the arbitration agreement and calling upon the respondent to appoint a sole arbitrator to adjudicate the disputes between the parties. The acceptance of this notice was refused by the respondent. Accordingly, the present application has been filed praying for appointment of an arbitral tribunal.

6. Having heard learned Counsel for the applicant and having perused the record, it is quite clear that the respondent was beneficiary of the loan facility made available by the applicant. Under clause 28 of the said agreement, the parties have agreed for disputes being referred to an arbitral tribunal under the said agreement. It is also on record that the applicant by notice dated 13 August 2018 invoked the

arbitration agreement and sought reference of the disputes. All the averments which are made in the petition are required to be treated as admitted as they are not controverted by the respondent.

7. In the above circumstances, the application is required to be allowed. Hence, the following order:-

ORDER

- (i) Mr. Anil Mehta, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the loan cum hypothecation agreement dated 27 March 2014;
- (ii) The learned sole prospective arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;
- (iii) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) All contentions of the parties on merits of the matter are expressly kept open;
- (vi) The application is disposed of in the above terms. No costs.

(vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

address: Prakash Chamber, Chamber No.1, Mezanine Floor,
77, Nagindas Master Road, Fort, Mumbai – 400 023.

Contact No. 9820166852 / 022-66353112.

[G.S. KULKARNI, J.]