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

ARBITRATION APPLICATION NO.9 OF 2019

Sustainable Agro-commercial Finance Limited ..Applicant
Vs.
Pratap Savaleram Thube & Ors. ..Respondents

Mr.Yashpal Thakur with Mr.Amit Somvanshi for Applicant.
Ms.Anjali Helekar with Ms.Anu Kaladharan for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 19th MARCH, 2019

P.C.:

Heard learned Counsel for the applicant and learned Counsel for the respondents.

2. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby the applicant has prayed for appointment of an arbitrator to adjudicate the disputes and differences which are stated to have arisen between the parties under the Loan-Cum-Hypothecation Agreement dated 30 March, 2016 (Exhibit-B to the petition). Learned Counsel for the applicant has drawn my attention to the arbitration agreement which is contained in Clause 29 of the Loan-cum-Hypothecation Agreement which reads thus:-

“ 29. 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 submit the same for arbitration of a Sole Arbitrator appointed by SAFL. 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 bare the respective cost and cost of the arbitration proceedings shall be shared.”

3. My attention is also drawn to the invocation letter dated 24 July 2018 by which the applicant called upon the respondents to appoint a sole arbitrator to adjudicate the disputes between the parties. However, as there was no concurrence on the part of respondents, present application has been filed.

4. Ms.Anjali Helekar along with Ms.Anu Kaladharan appeared for the respondents. The respondents do not dispute the agreement as also the notice invoking the arbitration agreement which was received by the respondents.

5. After hearing learned Counsel for the parties, learned Counsel for the respondents would submit that the respondents intend to resolve the disputes by the end of April 2019 as they are in the process to take such steps and put an end to the disputes. On this, learned Counsel for the applicant would submit that however, this should not preclude the Court

from proceeding and passing an order on this application of appointing an arbitral tribunal and the arbitral tribunal can arbitrate the disputes after April 2019, if the same are not resolved. Such course of action is also agreeable to the respondents.

6. In view of the above consensus between the parties, the application is required to be allowed. Hence, the following order:-

ORDER

- (i) Mr. Anil R. 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 30 March, 2016;
- (ii) The learned prospective sole 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) The learned prospective sole arbitrator shall enter a reference after 30 April 2019 which would be, in the event the disputes, as urged on behalf of the respondents are not resolved;
- (iv) All contentions of the parties on merits of the matter are expressly kept open;

(v) This order will not preclude the parties from having any settlement talks and amicably resolve the disputes before the arbitral tribunal enters a reference.

(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 Chambers, Chamber No.1, Mezzanine Floor,
77, Nagindas Master Road, Fort, Mumbai.

[G.S. KULKARNI, J.]