

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

927 ARBITRATION APPLICATION NO.12 OF 2017

AMBARWADIKAR INDUSTRIES PVT. LTD. THROUGH IT S
CHAIRMAN AND MANAGING DIRECTOR, V.R. AMBARWADIKAR
VERSUS
CHHATRAPATI SAMBHAJI RAJE SAKHAR UDYOG LTD.
THROUGH IT S MANAGING DIRECTOR AND CHAIRMAN

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Mr. S.S. Thombre, Advocate for the applicant.
Mr. D.R. Kale, Advocate for the respondent.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : 05.08.2021

ORDER :

1. Heard Mr. Thombre, learned Counsel for the applicant and Mr. Kale, learned Counsel for the non-applicant.

2. It is not disputed, that the Sugar Factory, that was run by Karmveer Kakasaheb Wagh Sahakari Sakhar Karkhana Ltd., At Post Kakasaheb Naga (Ranwad), Taluka Nifad, District Nashik, was given on lease under an agreement dated 27.11.2012, to Chhatrapati Sambhaji Raje Sahakar Udyog Ltd., which was with the approval of the Commissioner Co-operation.

3. It is also not disputed that Chhatrapati Sambhaji Raje Sahakar Udyog Ltd., in turn executed an agreement of sub-lease of the Sugar Factory, in favour of the present applicant, by an agreement dated 3rd December 2012. The execution of this agreement and the terms contained therein are not disputed by Mr.

Kale, learned Counsel appearing for the non-applicant. The existence of arbitration clause as contained in Term No. 38, of the agreement of sub-lease dated 03.12.2012, therefore, is an undisputed fact between the parties.

4. On account of disputes which had arisen between the parties, the applicant, by a notice dated 02.03.2017 invoked the arbitration clause. The same was replied by the non-applicant by reply dated 02.03.2017, wherein a stand was taken, that the agreement of sub-lease, dated 03.12.2012, was without the approval of the Commissioner Co-operation, and it was declined to refer the matter to the Arbitrator, as a result of which, the present application under Section 11 (6) of Arbitration and Conciliation Act, 1996 has been filed on 29.06.2017.

5. The contention by Mr.Kale, learned Counsel for the non-applicant that the sub-lease dated 03.12.2012 was without the approval of the Commissioner Co-operation, it's effect upon the mutual rights and obligations of the parties, is a matter to be considered and decided by the Arbitrator, and does not in any way impinge upon the issue of appointment of an Arbitrator. Mr. Kale, learned Counsel for the non-applicant further invites my attention to Clause 50 as contained in the agreement of sub-lease dated 03.12.2012, to contend that the conditions as contained therein, were not complied, and therefore the matter cannot be referred to arbitration.

6. A perusal of Term No. 50 would indicate, that it contemplates a situation of a breach, of a term or condition, during the working of the factory by the applicant. In the present case, it is an admitted position that the working of the factory, was prevented by the non-applicant in which case, Clause 38 would come into picture. In any case, in either contingency, the disputes are to be referred to arbitration. Since Clause 38 has been specifically invoked, in view of the prevention of the working of the sub-lease by not permitting the applicant to run the factory, the same would govern the issue.

7. In view of the above, I deem it necessary, to refer the matter to arbitration by appointing an Arbitrator. Both the learned Counsels, are at ad idem that the arbitration proceedings, can be commenced and continued at Aurangabad, in view of which, Hon'ble Justice Mr. P.V. Hardas, Former Judge of this Court, is hereby appointed as an Arbitrator to decide the disputes between the parties hereto. The fees of the learned Arbitrator shall be as per the Fourth Schedule of the Arbitration and Conciliation Act. The parties agree to appear before the learned Arbitrator on 13th August 2021.

8. The application is accordingly disposed of.

(AVINASH G. GHAROTE, J.)