

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

COMMERCIAL ARBITRATION PETITION NO. 1 OF 2022

TJSB Sahakari Bank Ltd. ... Petitioner

Versus

M/s. Laxmi Industries & Ors. ... Respondents

Mr. S.S. Kanetkar a/w Aadesh Patil for the Petitioner.

Mr. Mihir Desai i/b Devyani Kulkarni for Respondent Nos.1 to 8.

CORAM : R.I. CHAGLA, J.

DATED : 28th MARCH, 2022.

ORDER :

1 Heard Mr. Kanetkar, learned Counsel appearing for the Petitioner and Mr. Mihir Desai, learned Counsel appearing for the Respondents. By this Arbitration Petition the Petitioner is challenging the unilateral appointment of the Sole Arbitrator Respondent No.9, Shri Rajendra Brijmohan Agarwal appointed without consent of the Petitioner by the Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State, Pune, at the instance of Respondent No.2 who is the borrower. The Arbitrator had proceeded with the dispute numbered as Arbitration Reference No.01 of 2021.

2 The appointment of the Arbitrator was by order dated 06.10.2021 passed by the Commissioner for Corporation and Registrar of Co-operative Societies Maharashtra State, Pune dated 06.10.2021. By the said order Respondent No.9-Shri Rajendra Brijmohan Agarwal was appointed as an Arbitrator to adjudicate the dispute of the Petitioner against the TJSB Bank Limited (Multi State Bank) as per the provisions of the Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act') r/w Section 84 of the Multi State Co-operative Societies Act, 2002 (for short 'Multi State Act').

3 The Sole Arbitrator appointed under Order dated 06.10.2021 had issued directions by way of preliminary order dated 12.10.2021 for filing of statement of claim as well as defense/written statement/counter claim if any, and thus fixing the schedule. The Petitioner had filed an application under Section 16(2) of the Arbitration Act dated 15.01.2022 challenging the jurisdiction of the Sole Arbitrator together with adjournment application.

4 The Sole Arbitrator rejected the adjournment application on 24.01.2022. By further order dated 30.01.2022, the Sole Arbitrator rejected the application under Section 16(2) of the Arbitration and Conciliation Act, filed by the Petitioner. Thereafter, the Sole Arbitrator

allowed the Interim Applications under Section 17 permitting Respondent No.1 to sell the machinery and even restrained the Petitioner from taking coercive measures against Respondent Nos.1 to 8.

5 Being aggrieved by such unilateral appointment of the Sole Arbitrator, Respondent No.9 without consent of the Petitioner, the present Petition has been filed seeking substitution of the Sole Arbitrator by this Court terminating his mandate. The position now is that Respondent No.9 has passed the final award in the arbitral proceedings.

6 Mr. Kanetkar, learned Counsel for the Petitioner has submitted that the unilateral appointment of Respondent No.9 vide order dated 06.10.2021 as well as the order dated 16.01.2022 of 'No Say/Written Statement' to Section 17 of Interim Applications and Statement of Claim of Respondent Nos.1 to 8 have been challenged by this Petition. Further, there is a challenge to the order dated 30.01.2022 passed by Respondent No.9 rejecting the application dated 15.01.2022 preferred by the Petitioner under Section 16(2) of the Arbitration Act regarding challenging the jurisdiction and business transacted by the Respondent No.9 with reference to Arbitration Reference No.01 of 2021.

7 Mr. Kanetkar has referred to the decision of this Court dated 05.03.2021 in *Sanjeev Arora vs. Dewan Housing Finance Corp. Limited*

which held that the unilateral appointment of an arbitrator is illegal and mandate of Sole Arbitrator stands terminated. He has submitted that this Court has held that it is now well settled that one party cannot unilaterally appoint a Sole Arbitrator. This is by placing reliance on the decision of the Supreme Court in *Perkins Eastman Architects DPC and Anr. vs HSCC (India) Limited*,¹ which has held that where only one person who has an interest in the outcome or disputes must not have the power to appoint a Sole Arbitrator and that has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016). He has submitted that in the present case also the Sole Arbitrator was unilaterally appointed by the Commissioner for Corporation and Registrar of Co-operative Societies Maharashtra State, Pune vide order dated 06.10.2021. He has submitted that this would be contrary to the well settled law laid down by this Court as well as by the Supreme Court, namely that such unilateral appointments would be contrary to the essence of the amendments brought in by the Arbitration and Conciliation Act, 2015 (Act 3 of 2016) which was recognized by the Supreme Court in *TRF Ltd. vs. Energo Engineering Projects Limited*² as well as in the aforementioned decision of the Supreme Court in *Perkins*

1 2019 SCC OnLine 1517

2 (2017) 8 SCC 377

Eastman Architects DPC (supra).

8 Mr. Kanetkar has accordingly submitted that the unilateral appointment be set aside by terminating the mandate of Respondent No.9 by declaring such unilateral appointment as illegal and void.

9 Mr. Mihir Desai, learned Senior Counsel appearing for Respondent Nos.1 to 8 has submitted that the powers to appoint an arbitrator is provided under Section 84 (4) of the Multi State Act. Sub-Section (4) of Section 84 provides that where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar. Under Section 4 (1) of the Multi State Act it is provided that the Central Government may appoint a person to be the Central Registrar of Co- operative Societies and may appoint such other persons as it may think fit to assist the Central Registrar. Under Section 4(2) of the Multi State Act, the Central Government is empowered to issue notification authorizing any Officer of the Central Government or of a State Government in relation to a Multi State Co-operation Society subject to such conditions as may be specified therein.

10 Mr. Mihir Desai has relied upon the decision of this Court in *M/s. J. Square Steels Private Limited vs. The Union of India*³ which has considered the provisions of the Multi State Act. A similar contention was raised by the Petitioner in that case as raised here, namely that the Central Registrar could not have appointed the learned Arbitrator unilaterally or in anticipation of any dispute, without giving any opportunity to the Petitioner of being heard. The Division Bench of this Court in the said decision has held that there is no merit in this contention. The Division Bench of this Court considered in that case that the Bank had suggested three names of Advocates for their appointment as arbitrators in respect of the disputes which may arise between the Bank and its members to the Central Registrar. The Central Registrar appointed those three persons for different Regions. It was considered by the Division Bench of this Court that Central Registrar is empowered to appoint an Arbitrator under Section 84 (4) of the Multi State Act in respect of each Multi State Co-operative Society separately to deal with such disputes whether in respect of existing disputes on the date of such appointment or as disputes which may arise in future. It was accordingly held that there is no merit in the submission of the learned Counsel for the Petitioner that the Central Registrar was under an obligation to grant

3 2017 SCC OnLine Bom 8855

personal hearing to the Petitioner before appointing the arbitrator under Section 84(4) of the Multi State Act or that the Arbitrator could be appointed only case to case or only after dispute would actually arise and appointment of arbitrator is made by the Multi State Co-operative Society after effecting service of the application upon the member. In that case the constitutional validity of Section 84 was challenged by the Petitioner which was held to be thoroughly misconceived.

11 Mr. Mihir Desai has further relied upon the decision of the Division Bench of this Court in *Niwas Dattatraya Lad vs. Punjab and Maharashtra Co-operative Bank Limited*⁴. The Division Bench of this Court had considered the contention raised by the Petitioner herein that there was no consent of the parties to appoint the Sole Arbitrator. Further, that opportunity should have been given to the parties to appoint arbitrator of their choice and/or the parties should have been permitted to follow such procedure under Section 11 of the Arbitration Act before appointing the Arbitrator.

12 It was held that in view of Section 84 of the Multi State Act, such consent of parties to appoint the Arbitrator is not contemplated, particularly where there is no contrary agreement between the parties. It

4 2014 (3) Bom CR 407

is well settled that the arbitration proceedings always have the foundation of specific agreement between the parties. Therefore, for want of contrary agreement, the provisions of the said Act need to be respected in every aspect. Where the arbitration proceedings once referred based on the statutory provision, namely Section 84 (4) of the Multi State Act, the procedural aspect of appointment of Arbitrator by consent/mutual consent by nominating the Arbitrator, of their choice as contemplated under the Arbitration Act is impermissible, atleast for want of specific provision and the agreement.

13 Mr. Mihir Desai has accordingly submitted that in the present case the unilateral appointment of the Arbitrator has been contemplated under Section 84(4) of the Multi State Act. The Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State, Pune, unilaterally appointed the Arbitrator by order dated 06.10.2021 in exercise of powers under the statutory provision of the Multi State Act, namely Section 84(4). Thus such appointment cannot be found fault with. In any event he has submitted that an Application had been made under Section 16(2) of the Arbitration Act by the Petitioner challenging the jurisdiction of the Sole Arbitrator and which Application was rejected. He has accordingly submitted that the correct procedure followed by the Arbitrator after rejecting the Application of the Petitioner, was in passing

the final award. In the event the Petitioner was at all aggrieved by the final award, challenge is required to be made under Section 34 of the Arbitration Act and not by way of these proceedings under Section 14(1)(a) of the Arbitration Act.

14 Having considered the submissions, in my view the application of the Petitioner under Section 14 (1)(a) of the Arbitration Act is misconceived in view of the settled law laid down by this Court with regard to appointment of Arbitrator under the provisions of the Multi State Act. This Court has in the decisions relied upon by Mr. Mihir Desai namely *M/s. J. Square Steels Private Limited vs. The Union of India* (supra) and *Niwas Dattatraya Lad vs. Punjab and Maharashtra Co-operative Bank Limited* (supra) rejected the contention of the Petitioner that appointment of the arbitrator unilaterally could not have been made without an opportunity to the Petitioner of being heard as being without merit. Section 84(4) of the Multi State Act clearly provides that “Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.” The decision of this Court in *M/s. J. Square Steels Private Limited vs. The Union of India* (supra) has considered Section 4(2) of the said Act to contemplate a notification being issued by the Central Government directing the powers exercisable by the Central

Registrar under Section 84 of the said Act to be exercisable by the Registrar of the Co-operative Societies of the State/Union Territories in respect of Societies located in their respective jurisdiction subject to certain guidelines and conditions specified in the notification. This Court has held that there is no merit in the submission of the Petitioner that Central Registrar was under obligation to grant personal hearing to the Petitioner before appointing an Arbitrator under Section 84(4) of the Multi State Act. The Division Bench of this Court in *Niwas Dattatraya Lad vs. Punjab and Maharashtra Co-operative Bank Limited* (supra) has held that where arbitral proceedings are referred to based on the statutory provisions of the Multi State Act, the procedural aspect of appointing an Arbitrator by consent/mutual consent of their choice as contemplated under the Arbitration Act is impermissible.

15 The order dated 06.10.2021 has been passed by the Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State Pune, under Section 84(4) read with Section 4(2) of the Multi State Act, appointing Respondent No.9 as Sole Arbitrator to adjudicate the disputes of the Petitioner herein against TJSB Bank Limited. This order cannot be found fault with particularly considering the statutory provisions of the Multi State Act. It is also to be noted that the Petitioner had filed an application under section 16(2) of the

Arbitration Act objecting to jurisdiction of the Sole Arbitrator and which application was rejected by Respondent No.9-the Sole Arbitrator. Having chosen to apply under Section 16 of the Arbitration Act, the Petitioner would have no choice but to wait for final award, considering that the challenge to jurisdiction of the Sole Arbitrator unilaterally appointed having failed.

16 It is to be noted that though this Arbitration Petition was pending, Respondent No.9 went on to pass the final award. Respondent No.9 having been informed of the pendency of this Arbitration Petition, should have appropriately awaited the outcome of the present Arbitration Petition which challenged his mandate, prior to passing the final award. Nevertheless, Respondent No.9 having passed the final award, the Petitioner would have no choice but to challenge the final award under Section 34 of the Arbitration Act.

17 In view of the above findings, I find no merit in the Arbitration Petition filed by the Petitioner and accordingly the Arbitration Petition is rejected. There shall be no order as to costs.

(R.I. CHAGLA, J.)

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signed by
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