

Walvekar Brothers & Company	...	Petitioner
Vs.		
Siddanath Sugar Mills Limited through its Director Dilip Bramhadev Mane	...	Respondent

Ms. Shruti Tulpule for Petitioner.
Mr. Abhijit D. Kulkarni for Respondent.

CORAM : MANISH PITALE, J.
DATE : NOVEMBER 24, 2022

P.C. :

By this petition, the petitioner has approached this Court invoking Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator in the backdrop of disputes that have arisen between the parties, in the context of Memorandum of Understanding (MoU) dated 31.08.2022, pertaining to supply of molasses.

2. It is undisputed that clause 17 of the said MoU provides for resolution of disputes by arbitration, which reads as follows:-

“17. ARBITRATION

In case of any dispute raised by either of the parties the same shall be referred for arbitration to the arbitrator from Pune mutually appointed by both the parties. The decision given by the arbitrator shall be binding on both the parties.”

3. The petitioner invoked the arbitration clause by a notice dated 28.07.2021, proposing the name of an advocate from Pune to be appointed as the arbitrator. The respondent failed to respond to the said notice, as a consequence of which, the petitioner was constrained to approach this Court.

4. The respondent entered appearance through counsel in the present petition and filed an affidavit in reply.

5. Learned counsel for the petitioner relied upon the arbitration clause and the notice invoking the same, while seeking relief in terms of the prayers made in the petition.

6. Learned counsel appearing for the respondent relied upon the affidavit in reply and submitted that the present petition is not maintainable in the light of Section 10(3) of the Commercial Courts Act, 2015, pertaining to a situation where the subject matter of the arbitration is a commercial dispute of a specified value. It is submitted that since, admittedly, this is a commercial dispute of a specified value, Section 10(3) of the Commercial Courts Act, 2015 would apply and that the present petition cannot be entertained by this Court.

7. This Court has perused the aforesaid provision, which reads as follows:-

“10. Jurisdiction in respect of arbitration matters.-- Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and--

(1) ...

(2) ...

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.”

8. A bare reading of the above quoted provision would show that the contention raised on behalf of the respondent is based on a

misinterpretation of the said provision, for the reason that it pertains to applications in arbitration proceedings that would ordinarily lie before the principal civil court of original jurisdiction in a district (not being a High Court). On the other hand, Section 11(6) of the Arbitration and Conciliation Act, 1996 specifically provides for a situation where the parties have failed to act in terms of the requirements of the procedure of appointment of arbitrator in terms of the arbitration agreement. Section 11(6) of the Arbitration and Conciliation Act, 1996 reads as follows:-

“11.(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.”

9. A proper reading of the aforementioned provisions clearly indicates that the contention raised on behalf of the respondent has no relevance. Accordingly, it is rejected.

10. At this stage, learned counsel for the parties jointly propose the name of Justice S. R. Sathe, a former Judge of this Court to be appointed as the sole arbitrator to resolve the disputes between the parties.

11. Accordingly, Justice S. R. Sathe, a former Judge of this Court is appointed as the sole arbitrator. The details of the learned Arbitrator are

as follows:-

Hon'ble Shri Justice S. R. Sathe

A-802, Ruturang Apartment,
Behind Paranjape School,
Kothrud, Pune - 411 038.
Tel. No.020-2539 6407

12. The parties are directed to immediately communicate this order to the learned Arbitrator.
13. Learned Arbitrator is requested to submit his consent and disclosure statement in terms of Sections 11(8) read with 12(1) of the aforesaid Act within four weeks to the Registrar (Judicial) of this Court.
14. The fees of the learned Arbitrator shall be fixed in terms of the Fourth Schedule to the aforesaid Act.
15. All questions are kept open.
16. Petition stands disposed of.

(MANISH PITALE, J.)

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