

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

ARBITRATION PETITION NO. 6 OF 2019

Nutrients Agro Fruits Pvt. Ltd. ..Petitioner
V/s.
Kolhapur District Central Co-operative
Bank Ltd. ..Respondent

**WITH
INTERIM APPLICATION NO. 645 OF 2022**

Daulat Shetkari Sahakari Sakhar
Karkhana Ltd. .. Applicant/Intervenor

In the matter between:

Nutrients Agro Fruits Pvt. Ltd. ..Petitioner
V/s.
Kolhapur District Central Co-operative
Bank Ltd. ..Respondent

Mr. Prabhakar Jadhav for the Petitioner.
Mr. Tejpall Ingale for Respondent.
Mr. Drupad Patil for the Applicant/Intervenor.

**CORAM : C.V. BHADANG, J.
DATE : 29 SEPTEMBER 2022**

P.C.

. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

2. The Respondent Kolhapur District Central Co-operative Bank, had given financial assistance to Daulat Shetkari Sahakari

Sakhar Karkhana Limited (*'Karkhana'* for short). As there was a lapse in the repayment of the said loan, the Respondent Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (*'SARFAESI Act'* for short) and the bank took over possession of the *Karkhana* on 26.09.2012 under Section 14 of the said Act. Subsequently, the *Karkhana* has been leased out in favour of the Petitioner, for a period of 45 years as per the lease dated 12.08.2016. The said lease deed contains clause 12(a) and (b) as under:

“(a) if any dispute or difference arises between the parties at any time relating to the construction or interpretation of this Deed or any term and action or provision hereto or the respective rights, duties or liabilities of either party hereunder, then the aggrieved party shall notify the other Party in writing thereof and the parties shall endeavor to resolve the same by mutual discussions and and Deed.

(b) If the dispute or difference cannot be resolved within a period of 15 (fifteen) days, from the date of notice by the aggrieved Party, then the dispute shall be referred to Arbitration. Arbitration shall be conducted in Kolhapur in accordance with the provisions of the Arbitration and Conciliation Act, 1996. All arbitration proceedings will be in the English language.”

3. It appears that Respondent Bank issued a notice and terminated the agreement of lease requiring the Petitioner to deliver possession of the said *Karkhana* to the Bank. The Petitioner issued a notice dated 02.08.2018 invoking the Arbitration Clause and suggesting the name of the Arbitrator.

4. The notice did not evoke any favourable response which has led the Petitioner to file this petition.

5. The Respondent-Bank has filed affidavit-in-reply of Dy. Manager Mr. Vikas Jagtap and the existence of the Arbitration Agreement is not disputed. It is contended that the Petitioner has failed to pay dues of agriculturists by paying FRP for the sugarcane supplied to the said *Karkhana* for crushing and also failed to pay the salary/wages of the workers. According to the Respondent, the amount payable by the Petitioner is approximately Rs.16247.08 lacs as on 31.12.2018. The only contention raised is that the Respondent Bank has initiated proceedings for recovery of dues against the *Karkhana* under SARFAESI Act and referral of the dispute to arbitration may adversely affect such proceedings thereby causing prejudice to the Respondent Bank.

6. I have heard the learned counsel for the parties.

7. As noticed earlier, the existence of the Arbitration Agreement is not disputed. Thus, the appointment of the Arbitrator cannot be resisted on the ground that it will affect recovery proceedings initiated by the Bank against *Karkhana*. Any such issue about the effect of the arbitral proceedings has to

be considered by the appropriate authority/court under the SARFAESI Act and cannot be preempted in this application.

8. The Applicant-*Karkhana* has filed interim application No. 645 of 2022 for impleadment/intervention. In my considered view, at this stage in the present application, the matter is essentially between the Petitioner and the Respondent Bank, who are parties to the agreement to lease, which contains the Arbitration agreement/clause. The learned counsel for the Applicant in interim application no. 645 of 2022 submits that the Applicant shall file appropriate application before the learned Arbitrator, if appointed, which can be considered by the learned Arbitrator on its own merits and in accordance with law.

9. In the result, the following order is passed.

ORDER

(i) Justice T. V. Nalawade, Former Judge of this Court is appointed as a Sole Arbitrator to adjudicate the dispute between the parties.

(ii) The learned Sole Arbitrator, before entering the arbitration reference, shall forward a statement of disclosure as per requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar (Judicial-I) of this Court.

(iii) At the first instance, the parties shall appear before the prospective Arbitrator within a period of three weeks from today on a date which may be mutually fixed by the learned Sole Arbitrator.

(iv) The fees payable to the Arbitral Tribunal shall be as prescribed under the Bombay High Court (Fees payable to Arbitrators) Rules, 2018 and shall be borne by the parties in equal proportion.

(v) If, *Karkhana* files any application before the learned Arbitrator for impleadment/intervention the same shall be decided on its own merits and in accordance with law.

(vi) All contentions of the parties including on merits of the matter are expressly kept open.

(vii) The petition is disposed of in the above terms, with no order as to costs.

(viii) Interim Application stands disposed

of.

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

“Justice Tanaji V. Nalawade,
Meera Bharati Apartment,
Flat No. 109, Ranka’a Tower,
Behind D’Mart Mall,
Kolhapur– 416010.
Mobile No.08830970527
Email – tanaji.v.nalawade@gmail.com”

C.V. BHADANG, J.

(This order is corrected as per speaking to minutes of order dated 6.10.2022)