

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

ARBITRATION APPLICATION NO.143 OF 2020

Sustainable Agro-Commercial Finance Ltd.

..Applicant

Vs.

Pralhad Rangnath Jadhav & Ors.

..Respondents

Mr. Yashpal Thakur for Applicant.

None for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : APRIL 08, 2022.

PC.:

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) whereby the applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes which are stated to have arisen between the parties under the Loan-cum-Hypothecation Agreement dated 30 March, 2015. Clause 28 of the said agreement is the arbitration agreement between the parties which reads thus:-

“28. 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 first endeavour to resolve such dispute or controversy amicably through conciliation, within thirty (30) days from the date when such dispute or controversy arises. Unresolved disputes arising out of or relating to this agreement or the arrangement agreed to herein shall be referred to arbitration of a Sole Arbitrator jointly appointed by both the parties. 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.”

2. The case of the applicant is that a term loan facility in the sum of Rs.11,45,000/- was disbursed to the respondents as set out in more detail in the body of the application. The loan was to be repaid within 60 months by the respondents. The respondents consistently defaulted in making payment of the installments of the said financial facility as made available by the applicant. The applicant accordingly issued a notice dated 22 July, 2019 invoking the arbitration agreement and called upon the respondents to appoint a sole arbitrator to adjudicate the disputes between the parties. The said notice addressed to respondent no.3 was returned with postal remarks dated 29 July, 2019 “Refused to Accept”. (The said notice addressed to the respondents was received by respondent nos.1 and 2 on or about 21 August, 2019 and the said notice addressed to respondent no.3 was returned with postal remarks dated 29 July, 2019 “Refused to Accept”). As the respondents did not confirm and/or concur in the appointment of the Sole Arbitrator, the present application has been filed by the applicant praying for appointment of an arbitral tribunal.

3. On 01 April, 2022, when this matter was listed, learned counsel for the respondents stated that the respondents intend to settle the disputes and accordingly, the Court recording such statement as made on behalf of the respondents, adjourned the proceedings. However, today the respondents are not represented. It appears that the respondents are not interested to oppose the present proceedings also it appears that the respondents have no intention to settle the disputes. It is thus appropriate that the Court proceeds to pass an order appointing an arbitral tribunal.

4. Having heard learned Counsel for the applicant and having perused the record, it is quite clear that the respondents were beneficiaries of the loan facility made available by the applicant. Under clause 28 of the said agreement, the parties have agreed for disputes being referred to an arbitral tribunal under the said agreement. It is also on record that the applicant by the notice dated 22 July, 2019 invoked the arbitration agreement and sought reference of the disputes. As the respondents despite being served are not represented as also no reply has been filed, all the averments which are made in the application are required to be treated as admitted as they are not controverted by the respondents.

5. In the above circumstances, the application is required to be allowed. Hence, the following order:-

ORDER

(i) Mr. Anil 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, 2015.

(ii) The learned sole prospective 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) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(iv) All contentions of the parties on merits of the matter are expressly kept open;

(v) The fees payable to the arbitral tribunal shall be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018;

(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:

“Mr. Anil Mehta, Advocate of this Court,
address: Prakash Chamber, Chamber No.1, Mezanine Floor,
77, Nagindas Master Road, Fort, Mumbai – 400 023.
Contact No. 9820166852 / 022-66353112.”

[G.S. KULKARNI, J.]