

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 141 OF 2020**

Sustainable Agro-commercial Finance Ltd. ..Applicant
Vs.
Arjun Rabha Khemnir & Anr. ..Respondents

Mr. Yashpal Thakur for Applicant.

**CORAM : G.S. KULKARNI, J.
DATE : JULY 21, 2022.**

P.C.:

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 for adjudication of the disputes and differences which have arisen between the parties under the Loan-cum-Hypothecation Agreement dated 17 January, 2015 whereby the applicant has extended financial facilities to the respondents. The arbitration agreement is contained in clause 28 of the agreement in question 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 arise. 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 bear the respective cost and cost of the arbitration proceedings shall be shared.”

2. There was default on the part of the respondents in payment of installments. In view of persistent defaults on the part of the respondents to make payment, the application on various occasions called upon the respondents to make the payments of the outstanding dues, but the respondents failed to make the payments. Consequently, the applicant by its letters dated 25 June, 2019 invoked the arbitration agreement and called upon the respondents to make payment of amount of Rs.7,80,344/- or to refer the disputes for adjudication by appointing a sole arbitrator. As the said notices were not replied by the respondents, the present application came to be filed on 24 September, 2020.

3. On 13 June, 2022, this Court passed the following order:-

“1. Issue notice to the respondents, returnable on 4 July, 2022. In addition to Court Notice, learned advocate for the applicant is permitted to serve the respondents by private notice by all permissible modes including hand delivery and place on record affidavit of service before the returnable date.

2. If the respondents despite service are not represented on the adjourned date of hearing, the Court shall proceed to hear the applicant and pass appropriate orders.

3. Let a copy of this order be also served along with the applicant’s advocate’s notice to be issued to the respondents.

4. Stand over to 4 July, 2022.”

4. Thereafter the proceedings were listed on 04 July, 2022 and thereafter again on 20 July, 2022 when the application was adjourned for today. There is an affidavit of service of Mr. Vaibhav Bhaskar Deshmukh dated 29 June 2022 stating that the respondents are duly served as the respondents have duly acknowledged notices of the present proceedings. Also to this effect, there is an office report of Master (Adm.) dated 02 July, 2022 which records that the respondents are duly served. The circumstances indicate that the respondents are served, however, they have chosen not to appear in the present proceedings. It appears that they are not interested to contest the present proceedings. The averments as made in the application are also required to be taken as uncontroverted.

5. In the above circumstances, as there exists an arbitration agreement between the parties and also there is lawful invocation of the arbitration agreement, the application would be required to be allowed.

It is accordingly allowed by the following order:-

ORDER

(i) Mr. Rakesh N. Reddy, 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 17 January, 2015;

(ii) The learned prospective sole arbitrator, before entering the 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) The fees payable to the arbitral tribunal shall be as prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018.

(iv) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(v) All contentions of the parties are expressly kept open;

(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.Rakesh N. Reddy, Advocate of this Court,
Add. Rajgir Chambers, Office No.63, 7th Floor, Opposite
Old Customs House, Fort, Mumbai – 400 001.”
Mobile No. 9833311086
E-mail: rakeshreddy121@gmail.com”.

[G.S. KULKARNI, J.]