

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION APPLICATION NO.140 OF 2020**

Sustainable Agro-Commercial Finance Ltd. ...Petitioner

Vs.

Shivaji Premlal Giranje and Ors. ..Respondents

Mr.Yashpal Thakur, for the Petitioner.

CORAM : G.S. KULKARNI, J.

DATE : 8 JULY, 2022.

PC.:

1. By an order dated 13 June 2022 this Court issued notice to the respondents and the matter was adjourned to 4 July 2022. However, on 4 July 2022, none appeared for the respondents. Hence, to enable the respondents to appear in the present proceedings, hearing of this application was adjourned today. Again today the applicants are not represented. Accordingly, this application is taken up for hearing. An affidavit of service dated 28 June 2022 is placed on record. Considering the facts and circumstances, no useful purpose will be served to further adjourn this proceeding. Accordingly, the application is taken up for hearing.

2. Heard learned counsel for the applicant. This is an application 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 which are stated to have arisen between the parties under the Loan-cum-Hypothecation Agreement dated 28 March 2014. 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.”

5. The case of the applicant is that a term loan facility in the sum of Rs.11,14,690/-/- 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 25 June 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 nos.1 to 5 was received by Respondent Nos.1 to 4 on 23 July 2019 and Respondent No.5 received the same on 2 July 2019. As the respondents did not confirm and/or concur with the appointment of the Sole Arbitrator, the present application has been filed by the applicant praying for appointment of an arbitral tribunal.

6. 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 25 June, 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.

7. 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 28 March 2014;
- (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.]