

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 142 OF 2020

Sustainable Agro-commercial Finance Ltd. ..Applicant
Vs.
Kumar Sudam Maskar & Ors. ..Respondents

Mr. Yashpal Thakur for Applicant.

CORAM : G.S. KULKARNI, J.
DATE : JULY 20, 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 23 January, 2014 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 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 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 letter dated 25 June, 2019 invoked the arbitration agreement and called upon the respondents to make payment of amount of Rs.13,75,488/- 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 20 June, 2022, this Court passed the following order:-

“1. Issue notice to the respondents, returnable on **04 July, 2022**. In addition to the Court notice, learned advocate for the applicant is permitted to serve the respondents by private service by all permissible modes and place on record an affidavit of service.

2. Respondents are put to notice that if despite service of notice the respondents 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 forwarded to the respondents along with notice to be served by learned advocate for the applicant.”

4. There is an affidavit of service of Mr. Harshad Manaji Chavan dated 28 June, 2022 stating that the respondents have been duly served. Respondent no.1 has accepted service of notice for himself as well as on behalf of respondent nos.2 to 4. Also there is an office report dated 02 July, 2022 stating that the notices are served upon Respondent Nos.1 to 4. To this effect, there is office report of Master (Adm.) dated 02 July, 2022. The circumstances indicate that the respondents are duly served, however, they have chosen not to appear in the present proceedings. It appears that they are not interested to contest the present proceedings,

consequently, the averments as made in the application are required to be taken as uncontroverted.

5. In the above circumstances, as there exists an arbitration agreement between the parties as also there being a lawful invocation of the arbitration agreement, the application is required to be allowed. It is accordingly allowed by the following order:-

ORDER

- (i) Mr. Rohan P. Surve, 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 23 January, 2014;
- (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. Rohan P. Surve, Advocate of this Court
Address: Office No.20, Rajgir Chambers, Opp.Old Custom
House, Shahid Bhagatsingh Road, Fort, Mumbai.
Contact No. 8879314716
E-mail ID rpsurve@gmail.com”.

[G.S. KULKARNI, J.]