

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

ARBITRATION APPLICATION NO. 144 OF 2020

Sustainable Agro-commercial Finance Ltd. ..Applicant
Vs.
Ganpat Baburav Valave & Ors. ..Respondents

Mr. Yashpal Thakur for Applicant.

CORAM : G.S. KULKARNI, J.
DATE : JULY 11, 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 14 September, 2016 whereby the applicant has extended financial facilities to the respondents. The arbitration agreement is contained in clause 29 of the agreement in question which reads thus:-

“29. 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 submit the same for arbitration of a Sole Arbitrator appointed by SAFL. 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. 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 17 January, 2019 and 04 June, 2019 invoked the arbitration agreement and called upon the respondents to make payment of amount of Rs.17,62,722/- 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. Thereafter the proceedings were listed on 04 July, 2022 and accordingly, as per order passed by this Court on 04 July, 2022, the proceedings are listed for today. There is an affidavit of service of Mr. Vaibhav Bhaskar Deshmukh dated 29 June, 2022 stating that the respondents have duly served. They have duly acknowledged notices of the present proceedings. Also there is an office report dated 02 July, 2022 stating that the respondents and their advocates had instructed the postal department to hold the item for delivery of the packets containing notices issued by this Court. To this effect, there is office report of Master (Adm.) dated 02 July, 2022. 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. Hrishikesh R. Chavan, 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 14 September, 2016;
- (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. Hrishikesh R. Chavan, Advocate of this Court

Address: Chamber 7, Oriental Business Centre, Plot No.14,
Raja Bahadur Mansion, Nr. Bombay Stock Exchange,
Ambalal Doshi Marg, Fort, Mumbai – 400 001.

Contact No. 9869023236

E-mail ID chavanhrishikesh@gmail.com”.

[G.S. KULKARNI, J.]