

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

ARBITRATION APPLICATION NO.157 OF 2020

Sustainable Agro-Commercial Finance Ltd.

..Applicant

Vs.

Amjadhkhan Agakhan & Ors.

..Respondents

Mr. Yashpal Thakur for Applicant.

None for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : MARCH 29, 2022.

PC.:

1. Permission to delete the name of respondent no.3.
2. Heard learned counsel for the applicant. This application was listed before this Court on 15 March, 2022 when the Court heard learned counsel for the applicant. It was stated on behalf of the applicant that the respondents were served and affidavit of service was already placed on record. However, the respondents were not represented. The Court accordingly, had passed the following order:-

“1. Learned counsel for the applicant informs that respondent is served and an affidavit of service is already placed on record. However, the respondent is not represented.

2. To enable the respondents, as a matter of last opportunity to appear in the present proceedings, stand over to 29 March, 2022 (H.O.B.)

3. Learned advocate for the applicant is permitted to issue a fresh notice informing the respondent of the adjourned date

of hearing and place on record affidavit of service before the returnable date.

4. It is clarified that if the respondent despite service is not represented on the adjourned date of hearing, the Court shall proceed to hear the applicant and pass appropriate orders.

5. Let a copy of this order be also forwarded along with the advocate's notice."

3. In pursuance of the above order, learned advocate for the applicant has served a fresh notice on the respondents by registered post, the delivery of which is confirmed and placed on record affidavit of service dated 24 March, 2022. However, again today the respondents are not represented. Considering the facts and circumstances, no useful purpose will be served to further adjourn this proceeding. Accordingly, the application is taken up for hearing.

4. 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 24 August 2016. Clause 29 of the said agreement is the arbitration agreement between the parties 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 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.”

5. The case of the applicant is that a term loan facility in the sum of Rs.7,64,000/- was disbursed to the respondents as set out in more detail in the body of the application. The loan was to be repaid within 58 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 28 January 2020 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 and 2 was returned with postal remarks dated 05 February, 2020 “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.

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 29 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 28 January, 2020 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 petition 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 24 August 2016;

(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.]