

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10953 OF 2023

Currymia Foods Limited
Through its Director
Meenal Ashok Kale

Petitioner
[Ori. Respondent]

Versus

Choudhari Food Industries,
Through its proprietor,
Rajesh Madhavrao Choudhari

Respondent
[Ori. Claimant]

Mr. S.V. Dixit, Advocate for the petitioner.

Mr. P.F. Patni h/f. Mr. C.K. Shinde, Advocate for the respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th SEPTEMBER, 2023

ORDER :

1. By this petition under Article 227 of the Constitution of India, petitioner takes exception to the order dated 21.06.2023, passed by sole arbitrator, below Exhibit- 25 and 27 in Arbitration Dispute No. 1/2021.

2. Respondent/claimant filed arbitration dispute against Ahmednagar District Goat Rearing & Processing Co-operative Federation Limited (for short 'Federation'), raising claim of Rs. 2,55,52,158/- along with interest at the rate of 18% per annum from 12.09.2021 till realization of the entire amount. During the pendency of arbitration proceeding, petitioner by agreement

dated 04.02.2022 purchased the business of Federation, its assets and liabilities. After the said agreement, by order passed by Joint Registrar Co-operative Societies, Maharashtra State, Mumbai, dated 17.02.2023, the Federation ceased to exist.

3. In arbitration proceeding, petitioner filed purshis dated 25.03.2023 contending that since the petitioner has purchased assets and liabilities of the Federation, arbitration proceeding cannot be proceeded as the Federation has ceased to exist. Copy of the letter dated 17.02.2023, issued by Joint Registrar Co-operative Societies, Maharashtra State, Mumbai, is filed along with the purshis. After filing of purshis, respondent filed application Exhibit-25, under Order 22 Rule 10 of Code of Civil Procedure, seeking impleadment of the petitioner being successor of the Federation as party to the dispute. Respondent also filed application Exhibit-27 for amendment of claim petition. Petitioner opposed both the applications. By common order impugned in the present petition, arbitrator has allowed both the applications. Hence, the present petition.

4. Heard the learned advocate for the petitioner and learned advocate for the respondent. Perused the memo of writ

petition, its annexures, impugned order and the citations relied upon by both the parties.

5. Petitioner claims that since the petitioner-company was not party to the agreement, arbitration proceeding cannot proceed against it. In support of its contention reliance is placed on COX And Kings Limited v. SAP India Private Limited, AIRONLINE 2022 SC 637. He further submits that, since arbitration proceeding cannot proceed against the petitioner-company, the impugned order thereby allowing the application for amendment is also unsustainable.

6 Per contra, learned advocate for the respondent supports the impugned order by relying on Shivshankara & Anr. vs. H.P. Vedavyasa Char, Civil Appeal No. 10215 of 2011 and Inox Leisure Limited vs. Indo Pacific Project Ltd., Writ Petition No. 798/2020.

7. Admittedly, order impugned in the present petition is an interlocutory order and the same is not liable to be interfered with at this stage in the light of decision of the Apex Court in SBP & Co. vs. Patel Engineering Ltd. & Anr., (2005) 8 SCC 618. This decision is relied upon and followed by this Court at Nagpur

in Writ Petition No. 798/2020.

8. Apart from above, since during the pendency of arbitration proceeding, petitioner has taken over ongoing business, assets and liabilities of the Federation, the petitioner is rightly impleaded as party to the arbitration proceeding.

9. Petitioner has relied on COX and Kings Ltd, (supra), wherein doctrine of group of companies is considered by the Apex Court and the issue is referred to the larger bench.

This doctrine has no application to the facts of the present case as the petitioner has purchased ongoing business, assets and liabilities of the Federation.

10. No illegality or perversity is found in the order impugned in the present petition. There is no merit in the challenge raised by the petitioner in the present petition. Writ petition being devoid of merit is dismissed.

11. It is made clear that the observations in this order are prima facie and shall not influence the arbitrator while deciding the arbitration dispute on merits.

[NITIN B. SURYAWANSHI, J.]