

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**ARBITRATION PETITION NO. 46 OF 2022**

ISGEC Heavy Engineering Ltd. ...Petitioner

Vs.

Kisan Veer Khandala Sahakari Sakhar  
Udyog Kisan Veer Khandala Sahakari  
Sakhar Udyog ...Respondent

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Mr. Abhishek Tilak, Mr. Mohit Tiwari i/b. DMD Advocates, for the Petitioner.

Mr. Sanjeev P. Kadam a/w. Mr. Pratik P. Deshmukh, Ms. Varsha Thorat, Mr. Mayur Sanap, for the Respondent.

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**CORAM : MANISH PITALE, J.  
DATE : 3 MARCH 2023**

**P.C.**

. The petitioner has filed present petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of arbitrator for resolution of disputes arising between the parties in the context of two agreements. The first agreement dated 28/3/2013, pertained to supply of machinery by the petitioner to the respondent and the second agreement dated 27/6/2013, pertained to erection of the machinery and it is significant that both the agreements contained an identical arbitration clause. While in the supply agreement it was at clause 1.44, in the erection agreement, it was at clause 1.38.

2. The identical arbitration clause in both the agreements read as follows:

*1.44 Arbitration : If at any time there should be any question, dispute, difference between the parties in respect of any matter arising out of or in relation to the contract, either party may give to the other party notice in writing of the existence of such question, dispute or difference and the same shall be referred to the arbitration of Commissioner of Sugar, Maharashtra State, Pune. For any disputes the Commissioner of Sugar will be the Arbitrator and his judgment will be binding on both the parties.*

*The award of the Arbitrator shall be final and binding on the parties and be accepted by them. This reference to the Arbitrator shall be deemed to be reference, under the provisions of the Arbitration Act, 1996 and the rules made there under and any statutory modifications or recent amendment thereof that may be made from time to time and actually in force at the time of the reference. The cost of arbitration shall be borne by the parties as may be decided upon by the Arbitrator.*

3. It appears that disputes arose between the parties in the context of the aforesaid agreements and according to the petitioner, specific amounts were due from the respondent under

the said agreements. In this backdrop, the petitioner raised demands against the respondent and when there was no positive response from the respondent and the claims were disputed, the petitioner invoked the arbitration clause by issuing notice dated 17/8/2021 to the respondent. The petitioner marked a copy of the said notice to the Commissioner of Sugar also, since the arbitration clause specified the Commissioner of Sugar be the arbitrator. It is an admitted position that there was no response to the said notice.

4. The learned counsel for the respondent has appeared through counsel. This Court is informed that the Commissioner of Sugar, which is named as the authority to act as arbitrator, has expressed inability to do so. In that light, the learned counsel for the parties took instructions for appointment of a neutral arbitrator and thereupon they prayed for appointment of a former Judge of this Court as the sole arbitrator, considering the nature of disputes between the parties.

5. In view of the above, this Court is inclined to exercise jurisdiction to appoint a neutral sole arbitrator for resolution of disputes between the parties.

6. Accordingly, Shri. Justice Manoj S. Sanklecha, former Judge of this Court, is appointed as the sole arbitrator for resolution of disputes between the parties. The details of the learned arbitrator are as follows:

Hon'ble Shri Justice Manoj S. Sanklecha  
311, Churchgate Chambers, New Marine Lines,  
Churchgate, Mumbai – 21.  
Mobile No. 9820065338  
Email : [manojssanklecha@gmail.com](mailto:manojssanklecha@gmail.com)

7. It is expressly agreed between the parties before this Court that the place of arbitration shall be Mumbai and that the disputes arising from the two agreements are consolidated for being considered and disposed of by the learned sole arbitrator.
8. The learned arbitrator is requested to send his consent and disclosure statement as per Section 11(8) and 12(1) of the aforesaid Act, within four weeks to the Registrar (Judicial) of this Court. The fees of the learned arbitrator shall be as per schedule IV to the said Act.
9. The parties to communicate this order to the learned arbitrator immediately.
10. All contentions of the parties are kept open.
11. The petition stands disposed of, in aforesaid terms.

**MANISH PITALE, J.**