

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.139 OF 2020

Sustainable Agro-commercial Finance Limited] .. Applicant

vs.

Chandrarhar Manohar Chavan] .. Respondent

Mr.Yashpal Thakur a/w Mukund Pandya for the Applicant.

Mr.Ranveer Choudhari i/b Mahadeo Choudhari for the Respondent.

CORAM : BHARATI DANGRE, J

DATE : 16th June, 2023.

P.C.

1] The Applicant, a Non-Banking Company (NBFC) is engaged in the business of providing finance facilities to the farmers.

On the Respondent approaching the Applicant and requesting for finance facility for purchase of Micro Irrigation System (MIS), his proposal was examined by carrying out credit analysis. Subsequent thereto, the Applicant sanctioned to the Respondent a term loan facility upto the maximum aggregate value of Rs.4,78,000/- vide its Facility Letter dated 06.02.2014 on the terms and conditions stipulated therein.

Based on the Facility Letter, the Applicant and Respondent entered into a Loan-cum-Hypothecation Agreement on 07.02.2014, where for availing finance facility, the Respondent furnished a Demand Promissory Note.

Apart from this, in order to secure the loan facility the Deed of Mortgage was also executed and registered on 15.02.2014, under which the immovable property held by the Respondent was mortgaged in favour of the Applicant.

The Respondent committed defaults in repayment of the amount due under the Facility Agreement and despite being called on various occasions to clear the outstanding dues, there was complete failure to pay any heed to the said notice.

The Respondent, thus, committed the default, as contemplated under Clause 15 of the Loan-cum-Hypothecation Agreement and that is how the dispute arose between the parties.

2] The Loan-cum-Hypothecation Agreement dated 07.02.2014 entered between the Applicant and the Respondent consist of a clause for dispute resolution.

The said clause stipulate that “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 the terms, the parties shall make an endeavor to resolve such disputes amicably through conciliation. All those disputes shall be referred to arbitration or a Sole Arbitrator jointly to be appointed by the Parties. The place of arbitration was agreed to be Mumbai.”

3] An attempt was made to resolve the disputes through the officials of the Applicant, but despite several attempts, since the disputes could not be resolved, the Applicant ultimately invoked arbitration in terms of Clause 28 of the Agreement vide notice dated 25.06.2019 and another notice dated 05.07.2019.

Since there was no response from the Respondent, the present Arbitration Application is filed requesting the Court to exercise its power under sub-section 6 of Section 11 of the Arbitration and Conciliation Act, 1996.

4] Heard Mr.Yashpal Thakur, the learned counsel for the Applicant and the learned counsel Mr.Ranveer Choudhari who represented Mr.Mahadeo Choudhari, the counsel on record.

The learned counsel for the Respondent state that the counsel on record is unable to attend the proceedings, as he is not in Mumbai. Though he established telephonic contact with him as directed by this Court, since the matter was directed to be listed at 2.30 p.m., he state that no instructions were given to him by the counsel on record.

5] In the wake of the undisputed position emerging from the Application, the first in respect of existence of arbitration clause in the Agreement and secondly failure on the part of the Respondent to discharge the liability, resulting in arbitration being invoked, with no response from the Respondents within 30 days, I deem it appropriate to exercise power by appointing Sole Arbitrator to resolve the disputes between the parties.

Moreover, as the Arbitration Application is pending before this Court from 2020, I do not deem it appropriate to accommodate the learned counsel for the Respondent as per the request, since the relevant facts are not in dispute and are evident from the Arbitration Application.

6] In the wake of above, I deem it appropriate to appoint Advocate Ms.Kausar Banatwala, as an Arbitrator, to resolve the disputes between

the parties, on the following terms and conditions:

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Advocate Ms.Kausar Banatwala, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The learned Arbitrator, within a period of 15 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.

(d) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 19/12/2022. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication information of the parties : Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(f) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) Fees : The learned Arbitrator shall be entitled for the fees as per the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All contentions of both sides are left open to be raised by the respective parties before the Arbitral Tribunal, in accordance with law.

Arbitration Application stand disposed off in the aforesaid terms.

[BHARATI DANGRE, J]