

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION No. 278 OF 2022

Shri Ganesh Agro Industries and ors __ Vs. __ The Maharashtra State Co-operative
Grower's Marketing Federation Ltd and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.D.Heda, Advocate for applicant
Mr. M.V.Samarth, Senior Advocate assisted by Mr. V.P.Ingle, Advocate for
non-applicant no. 1

CORAM : AVINASH G. GHAROTE, J.
DATE : 03/02/2023

1] Heard Mr. Heda, learned counsel for the applicants and Mr.Samarth, learned senior counsel for the Respondent No.1.

2] There is no dispute regarding execution of the agreement dated 24.12.2019 between the parties, which contains Clause No. 15, which requires any dispute arising between the parties, in relation to the agreement, to be referred to a sole arbitrator to be appointed by the managing director of the respondent No.1.

3] In view of what has been held in **Perkins Eastman Architects DPC and anr vrs HSCC (India) Limited, (2020) 20 SCC 760**, since the managing director would be suffering from the disqualification under Section 12(5) of the A&C Act, it would be

appropriate for this Court to appoint an independent arbitrator. The clause has been invoked by the communication dated 21.9.2021 which has been replied by the communication dated 3.1.22, refusing to accede to the request. It is therefore, contended that considering the existence of the dispute, an arbitrator needs to be appointed.

4] Mr. Samarth, learned senior counsel for the respondent No.1, submits that looking to the nature of the contract which relates to processing of the cotton supplied by the respondent to a certain standard and quality after processing, the deductions have been made on account of excess trash found in the supply after processing, for which reliance was placed upon two different quality control reports of different laboratories. He therefore submits that the matter would not be arbitrable on account of the aforesaid two reports.

5] Since the execution of the agreement dated 24.12.2019, the arbitrator clause and its invocation is not in dispute, and since the question of arbitrability is to be decided by the arbitrator under Section 16 of the A&C Act, in light of **Vidya Drolia vrs Durga Trading Corporation (2021) 2 SCC 1**, as this is not the case falling under para 237, in my considered opinion this is a fit case to appoint arbitrator, considering which in light of what has been held in **Perkins** (supra),

Mr. Justice Z.A. Haq, Former Judge of this Court is hereby appointed as an arbitrator to arbitrate upon the dispute between the parties hereto.

6] The parties shall appear before the learned arbitrator on 13.02.2023 and place a copy of this order before him to apprise him of the same.

7] It is made clear that the copy of the order shall not be supplied to the applicants, unless processing charges are deposited by the applicants.

8] The application is disposed of in above terms. No costs.

JUDGE

Rvjalit