



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

24 ARBITRATION APPLICATION NO. 8 OF 2023

M-S SHRADDHA IMPEX, A PARTNERSHI FIRM
VERSUS
SAHAKAR MAHARSHI SHIVAJIRAO NARAYANRAO NAGAWADE SSAHAKRI
SAKHAR KHARKHAN LIMITED

...
Advocate for Applicant : Mr. Phule Abhijit M. with Abhinav Dhanorkar
Advocate for Respondent : Mr. A. V. Hon
...

CORAM : ARUN R. PEDNEKER, J.

Dated : March 26, 2024

PER COURT :-

1. The agreement dated 29/04/2022, for raw sugar purchase was executed between the applicant and the respondent and agreed for transaction of 2700 Metric Tonnes of Raw Sugar at the rate of Rs.32,150/- per metric ton ex-factory plus goods and service tax and TCS. By the Notification dated 24/05/2022, the Government of India asked the exporters and Sugar Mills to apply for Export Release Orders and after approval, export the raw sugar. The respondent was granted Export Release order on 05/08/2022. The Seller through letter dated 09/08/2022 cancelled the quantity allotted for raw sugar export.

2. It is the contention of the applicant that on earlier occasion the applicant invoked arbitration by filing an application under Section 9 of the Arbitration and Conciliation Act of 1996 before the District and Sessions Court, Ahmednagar as the applicant and respondent had dispute with regard to the cancellation of contract and same had been decided on 23/09/2022. The applicant contend that the respondent has entered into

contract with other parties at a higher price compared to the price decided between applicant and respondent by agreement dated 29/04/2022.

3. The applicant, on 07/03/2023 invoked arbitration under Clause 13 of the Raw Sugar Purchase Agreement for recovery of damages under the agreement on account of contractual breaches by the respondent and issued notice of arbitration contending therein that the arbitration agreement exist between the parties.

4. The applicant issued a notice for appointment of Arbitration as per Clause 13 of the Raw Sugar Purchase Contract, dated 29/04/2022 and proposed the name of arbitrator as Hon'ble Justice Mr. Dilip S. Karnik, and requested the respondent to confirm the appointment. The Respondent has not responded as regards to the appointment of arbitrator so as to bring the dispute for arbitration. The respondent being not agreeable for the same, filed the present application for appointment of Arbitrator invoking Section 11 (6) of the Arbitration and Conciliation Act, 1996.

5. Raw Sugar Purchase Contract, dated 29/04/2022 provides for Arbitration. Paragraph No.13 of the said contract reads as under :-

"13. In case of any dispute arising out of this agreement will be referred to sole arbitrator and the decision of the arbitrator shall be final and binding on both the parties."

6. The parties are ad idem and have agreed to appoint Mr. Justice Mr. R. M. Borde for Arbitration of the disputes between the parties. Accordingly, the arbitration application is disposed of with following order :

a] **Appointment of Arbitrator :-**

Mr. Justice R. M. Borde, is appointed to act as sole arbitrator to adjudicate upon the disputes between the parties.

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 within one week from the date this order is uploaded.

(ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following post and email addresses :

Arbitrator : Mr. Justice R. M. Borde

Address : M-2/M-3, Mangal Kalash Housing
Society, New Shreynagar, Near
Zambad Estate, Aurangabad-
431 005.

c] **Disclosure :**

The learned Sole Arbitrator is requested to forward the

necessary statement of disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Registrar of this Court, referencing this arbitration application, as soon as possible, and in any case sufficiently before entering upon the reference to arbitration. That statement will be retained by the Registrar on the file of this application. Copies will be given to both sides.

d] **Appearance before the Arbitrator :**

Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates and the parties to obtain appropriate directions from the arbitrator in regard to fixing a schedule for completing pleadings, etc.

e] **Contact / communication information of the parties :**

Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.

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] **Interim Application/s :**

- (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim

applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.

(ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

h] **Fees :**

The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

i] **Sharing of costs and fees :**

Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.

J] **Venue and seat of arbitration :**

Seat of the arbitration would be governed by the provisions of the agreement executed between the parties.

(ARUN R. PEDNEKER, J.)

vj gawade/-.