



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 ARBITRATION APPLICATION NO. 9 OF 2020

VAISHNO DEVI FOOD PRODUCTS TRS ITS AUTHORIZED
REPRESENTATIVE SAMEER

VERSUS

THE STATE OF MAHARASHTRA TRS PRINCIPAL SECRETARY AND
OTHERS

...

Advocate for Applicant : Mr. G. K. Naik Thigle

Advocate for Respondents : Mr. S. B. Jadhav

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 05th APRIL, 2024

PER COURT:

1. Heard.
2. The dispute has arisen between the parties by virtue of claims arising out of an agreement dated 12.10.2018. The agreement contemplated for supply of dairy products to the respondent. The agreement, at clause 32, provides for resolution of dispute by arbitration, which is quoted as under:-

“३२. वरील अटी व शर्तीप्रमाणे बदल करणे व सुधारित अटी व शर्ती निर्धारित करण्याचे अधिकार मा. आयुक्त, दुग्धव्यवसाय विकास विभाग, म. रा. मुंबई यांना राहतील. ठेका कालावधीमध्ये ठेकेदार व प्रादेशिक दुग्धव्यवसाय विकास अधिकारी / उपदुग्धशाळा व्यवस्थापक, शासकीय दूध योजना, उदगीर यांच्यात वाद निर्माण झाल्यास, या प्रकरणी मा. सचिव, पदुम, महाराष्ट्र शासन, मुंबई - ३२ हे लवाद म्हणून काम पाहतील व त्यांचा निर्णय ठेकेदारास बंधनकारक राहील. या लवादाचे कामकाज *Arbitration & Conciliation Act, 196* या कायद्याप्रमाणे होईल.”

3. The dispute having arisen between the parties, the notice for invoking the arbitration clause was given by the applicant on 24.09.2019. The respondent by reply dated 08.11.2019, responded by refusing to appoint a private arbitrator. He contended that in terms of the arbitration clause officer of the respondent has to be appointed as an arbitrator.

4. However, in view of the settled law that the officer of the respondent cannot be appointed as an arbitrator, the application is moved before this court under section 11(6) of the Arbitration and Conciliation Act, before this court.

5. In view of the settled position of law that the officer of the respondent cannot be appointed as arbitrator in **TRF Ltd. Vs. Energo Engineering Projects Ltd., (2017) 8 SCC 377** and **Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd., (2020) 20 SCC 760**, the application for appointment of arbitrator can be allowed by this court. Both the parties agreed that Hon'ble Shri A. V. Nirgude (Retired High Court Judge) be appointed as an arbitrator in the matter.

6. Both parties agree that, Justice Shri A. V. Nirgude, former Judge of this Court can be appointed as an Arbitrator to decide the disputes arising between them.

7. Accordingly, the arbitration application is disposed of with following order :-

a) Appointment of Arbitrator :-

Justice Shri A. V. Nirgude, Former Judge of this Court 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 postal and email addresses :-

Arbitrator	:	Hon'ble Mr Justice A. V. Nirgude, former Judge of this Court.
Address	:	48, 5th Floor, Western India House, Sir P. M. Road, Bombay Store, Fort, Mumbai 400001
Phone	:	9049399387
Email	:	avnlegal2016@gmail.com

(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 to obtain appropriate directions 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 :-

Since the arbitration agreement does not provide for place of arbitration, the parties may consent to the place of arbitration or the arbitrator to decide the same in accordance with law.

[ARUN R. PEDNEKER, J.]