

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 16 OF 2024

Avika Farms Through its Partner Mr Akshay Bhalgat ...Petitioner

Versus

AS Agri & Aqua LLP ...Respondent

Mr Mutahhar Khan, *i/b Bulwark Solicitors, for the Petitioner.*

None for the Respondent.

CORAM: ARIF S. DOCTOR, J

DATED: 15th July 2024

PC:-

1. The present Arbitration Petition is under Section 11 of the Arbitration and Conciliation Act 1996 for appointment of an Arbitrator. Mr Khan, Learned Counsel appearing on behalf of the Petitioner today tenders and Affidavit of service in compliance of the order dated 24th April 2024, by which the Petitioner was directed to serve the Respondent by substituted service, which order was subsequently extended by 24th June 2024. Affidavit of Service is taken on record. Mr Khan submitted that the disputes and differences have been arisen out of a Contract Framing Agreement dated 19th November 2021 and a Supplementary Contact Framing Agreement dated 14th July 2022. He

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points out that the arbitration clause is clause 28 at page 37, which reads thus:

“28. All disputes of differences arising under this Agreement will be settled mutually in an amicable manner by both the parties failing which the matter will be referred to arbitration having jurisdiction at Thane and in such an event the provisions of Arbitration and Conciliation Act, 1996 shall apply.”

2. He then invited my attention to the notice dated 27th June 2023 which is to be found at Exhibit “F”, page 61 that there was no reply to this notice and it is thus that the present application has been filed.

3. After hearing Mr Khan, Learned Counsel appearing on behalf of the Petitioner and since I am satisfied that the order for service have been duly complied with and despite this, none has entered appearance on behalf of the Respondent as also I am satisfied as to the prima facie existence of the Arbitration Agreement and the disputes that have arisen are not as such that are non-arbitrable, I appoint Mr Krishaprasad R Warriar, to act as a Sole Arbitrator to decide the disputes and differences between the parties arising out of a Contract Framing Agreement dated 19th November 2021 and a Supplementary Contact Framing Agreement dated 14th July 2022, on the following terms and conditions:

TERMS OF APPOINTMENT

- (a) **Appointment of Arbitrator:** Mr Krishaprasad R Warriar, Retired District & Sessions Judge, is hereby nominated to act as a Sole Arbitrator to decide the disputes and

differences between the parties under the Partnership Deed dated 27th March 2009.

(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 Petitioner within one week from the date this order is uploaded.
- (ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses.

Arbitrator **Mr Krishaprasad R Warriar,**
Retired District & Sessions
Judge.

Address Flat No. 606, Rosabella,
Opposite Suraj Water Park,
Ghodbunder Road, Thane
(West),
Thane 400 615

Email krwarrierm@yahoo.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioner will arrange to file the original statement in the

Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.

- (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. The information is to include functional email addresses and mobile numbers.
- (f) 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. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii)** The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.

- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
 - (h) **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.
 - (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
 - (j) **Venue and seat of arbitration.** Parties agree that the venue and seat of the arbitration will be in Thane.
- 4. All rights and contentions of both parties are kept open.
 - 5. The Petition is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J)