

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION APPLICATION NO.121 OF 2024

Desai Agrifoods Private Limited ... Applicant
V/s.

Pinaafal Farms Private Limited ... Respondent

Mr. Siddhesh Bhole (through VC), Mr. Yakshay Chheda (through VC), Mr. Apoorva Kulkarni i/by SSB Legal & Advisory for the Petitioner.

Mr. Rahul Kedar a/w Prachi Joshi, Priya Pokhare i/by Akash Agarwal for the Respondent.

CORAM : ARIF S. DOCTOR, J.

DATE : 24TH OCTOBER 2024

P.C. :

1. This is a Commercial Arbitration Application filed under Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of an arbitrator.
2. The disputes and differences between the parties had arisen from a Pineapple Offtake Agreement dated 20th September 2021.
3. Mr. Bhole, Learned Counsel appearing on behalf of the Petitioner has invited my attention to the notice dated 17th October 2023 invoking arbitration and pointed out that as per the Clause, the Petitioner has nominated

an Advocate of this Court to act as a Sole Arbitrator. He submits that the name was not agreeable and the Respondent wrote back suggesting names of three Advocates of this Court to act as an Arbitrator.

4. Given that there was no consensus arrived at between the parties, the present Application has been filed.

5. The Application was opposed by the Respondent who submitted that the disputes that have arisen fall outside the scope of the Agreement in question. He has invited my attention to Clause 10.2 of the said Agreement, which contemplates that the parties would enter into an Additional Agreement in respect of the repayment of the amounts, which the Petitioner now claims are due and payable.

6. However, when it was put to Learned Counsel for the Respondent as to the extremely limited remit of the present Applicant and the fact that there exists an Agreement which contained an arbitration clause, which is not disputed by the Respondent, Learned Counsel appearing on behalf of the Respondent fairly submitted that the Court would then appoint an Arbitrator keeping open all rights and contentions of the Respondents including the aspect of arbitrability of the disputes and maintainability of the claim. To this, the Petitioner did not have any opposition.

7. It is in these circumstances, I appoint Mr. Anosh Sequeira, Advocate to act as the Sole Arbitrator to adjudicate the disputes and differences which have arisen between the parties on the following terms :-

TERMS OF APPOINTMENT

- (a) Appointment of Arbitrator:** Mr. Anosh Sequeira, Advocate is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences 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) The Advocates for the Applicant will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator **Mr. Anosh Sequeira, Advocate**

Address 11, Hind Rajasthan, 4th Floor,
Alana Lane, Fort, Mumbai.

Mobile 9820217588

Email anosh.sequeira@gmail.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 Applicant 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) **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. 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.
- (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) **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.
- (k) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

8. All rights and contentions of the Respondents are expressly kept open including the aspect of arbitrability of the disputes and maintainability of the claim.

9. The Application is disposed of in these terms. No costs.

(ARIF S. DOCTOR, J.)