

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 238 OF 2024

Frigorifico Allana Pvt. Ltd., .. Applicant.
v/s.
Guru Kripa Trading Company .. Respondent.

Adv. Rohan Savant with Adv. Rahul Pillai and Adv. Krishna Iyer i/b.
Pragnya Legal, for the Applicant.

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CORAM: FIRDOSH P. POONIWALLA, J.
DATE : 14th DECEMBER, 2024.

PC:-

This Application has been filed under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (“the Act”), seeking appointment of an Arbitrator to arbitrate upon disputes and differences arising between the parties.

2 The Contract between the parties is contained in 6 Business Confirmation Letters by which the Applicant agreed to supply edible oil to the Respondent. The details of the said six Business Confirmation Letters, are as under:-

Date of Contract	Trade Note No.	Commodities	Quantity (In Metric Tonnes)	Rate (per 10 kgs.)	Period of Delivery
26/05/2022	1914	Soyabean Refined Oil	1000	Rs.1550/-	01/06/2022 to 30/06/2022

03/06/2022	1949	Soyabean Refined Oil	500	Rs.1512/-	03/06/2022 to 30/06/2022
08/06/2022	1985	RBD Olein Oil	250	Rs.1495/-	25/06/2022 to 10/07/2022
08/06/2022	1986	Soyabean Refined Oil	250	Rs.1545/-	09/06/2022 to 30/06/2022
08/06/2022	1996	RBD Olein Oil	250	Rs.1495/-	25/06/2022 to 15/07/2022
08/06/2022	1997	RBD Olein Oil	250	Rs.1580/-	25/06/2022 to 15/07/2022

3 Each Business Confirmation Letters contains an Arbitration Clause which reads as under:-

“ Arbitrator:- In case of any dispute – Our Brokers decision shall be final & binding on both parties i.e. Seller & Buyer.”

4 Each Business Confirmation Letter also provides that extra charges which will be applicable in advance for Arbitration as, under the said Business Confirmation Letters, the broker was to be the Arbitrator.

5 It is the case of the Applicant that the Respondent did not make payment in respect of certain supplies already taken by it. Further, it is also the case of the Applicant that the Respondent did not take certain supplies from the Applicant. In this scenario, disputes and differences arose between the parties.

6 By a letter dated 11th October, 2023 addressed by the Advocate for the Applicant to the Respondent, the Applicant invoked Arbitration under the said Business Confirmation Letters and stated that,

although the Arbitration Clause under the said Business Confirmation Letters stipulates the appointment of the Broker, i.e. Rasesh Corporation, as the Arbitrator, the said Rasesh Corporation cannot be appointed as the Arbitrator on account it being an interested party and explicitly barred from acting as an arbitrator under the provisions of Section 12 of the Act. In these circumstances, the Applicant gave the name of an Advocate practising in this Court as the Arbitrator and called upon the Respondent to nominate its Arbitrator.

7 In response to the said letter, the Advocate for the Respondent addressed a letter dated 10th November, 2023 to the Applicant. In the said letter, the Respondent disputed the existence of an Arbitration Clause on the ground that it did not contain the Seat of Arbitration, that the Broker, who was an interested party, was named as Arbitrator and on account of non-stamping of the Business Confirmation Letters.

8 Thereafter, the Applicant addressed a letter dated 5th February, 2024, through their Advocates, to the Respondent's Advocate. The Applicant stated therein that several phone calls had been made as well as text messages sent to decide the name of the Arbitrator as well as the seat of the Arbitration. Despite the same, even after two months, the discussion remained inconclusive.

9 In these circumstances, the Applicant has filed the present Application under Section 11 of the Act.

10 The Respondent, though served, has remained absent.

11 I have heard the learned Counsel for the Applicant. The Arbitration Clause in the said six Business Confirmation Letters talks about the Arbitrator and provides that, in case of any dispute, the decision of the Broker, who would be appointed as an Arbitrator, would be final and binding on both the parties. This clearly shows that the parties intended to resolve their disputes through Arbitration. This is also clear from the fact that the letter provides that, if the Broker was to act as an Arbitrator, he would charge extra for conducting the Arbitration.

12 For these reasons, in my view, there exists a valid and binding Arbitration Agreement between the parties. Further, in my view, the objections taken by the Respondent have no merit. As far as the Arbitration Clause not containing any seat of Arbitration is concerned, the same is not a mandatory requirement for an Arbitration Clause and an Arbitration Clause can be valid and binding even in the absence of the Seat being mentioned therein.

13 As far as stamping is concerned, it is now settled by the Hon'ble Supreme Court that the said objection cannot be raised at the stage of Section 11, and, at that stage the Court only needs to examine *prima facie* the existence of an Arbitration Agreement. The third objection of the Respondent that the named Arbitrator would not be able to act as he is an interested party, also does not have any merit, as the Applicant, while invoking Arbitration, has not nominated the Broker as an Arbitrator.

14 For all these reasons, in my view, there is a valid and binding Arbitration Agreement between the parties. The correspondence annexed to the Application shows that disputes and differences have arisen

between the parties. Further, by its letter dated 11th October, 2023, the Applicant has invoked the Arbitration Clause in the Business Confirmation Letters . For all these reasons, in my view, an Arbitrator will have to be appointed to arbitrate upon all disputes and differences that have arisen between the parties.

15 Accordingly, the following orders are passed:-

- (a) Mr. Amjad A. Sayed, Retired Chief Justice of the Himachal Pradesh High Court, is appointed as the Arbitrator to arbitrate upon all the disputes and differences arising between the parties under the said 6 Business Confirmation Letters. The contact details of Mr. Amjad A. Sayed, Retired Chief Justice of Himachal Pradesh High Court, who is appointed as an Arbitrator, are as under:-

Name :- Mr. Amjad A. Sayed, Retired Chief Justice of
Himachal Pradesh High Court
Email :- sayamjad@gmail.com
Address :- 225, DBS Bsuiness Center,
2nd Floor, Raheja Chambers,
Nariman Point, Mumbai 400 021.

- (b) The Advocate for the Applicant shall intimate the Arbitrator about his appointment within a period of one week from the date of uploading of this order;
- (c) In addition, the Office of the Prothonotary and Senior Master of this Court shall also intimate the Arbitrator about his appointment within a period of one week from the date of uploading of this order.
- (d) The Arbitrator so appointed to make the disclosure as required

under the provisions of the Act within a period of one week from the date of intimation of his appointment;

- (e) The Arbitrator shall charge fees as per the Rules framed by this Court in that regard.

16 The Arbitration Application is disposed of in the aforesaid terms. There will be no order as to costs.

(FIRDOSH P. POONIWALLA ,J.)