

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
ARBITRATION PETITION NO.196 OF 2025**

Sahyadri Sahakari Sakhar Karkhana Ltd.
Indumatinagar, Dhamod, Tal-Radhangri,
Dist. Kolhapur-416211
By and through its Director.

..Petitioner

Versus

M/s Micros Engineering Concept P Ltd.
A Private Ltd Company
Having its registered office at
674/1 Mahalaxmi Plaza Building,
Shakti Khand 2nd Indirapuram,
Ghaziabad-201014.

..Respondent

...

Mr. Sarthak S. Diwan, Advocate for Petitioner.

Mr. Vinay B. Kadam a/w Mr. Shubham R. Sawant a/w Mr. Onkar
Ghatage, Advocate for Respondent.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 20th NOVEMBER, 2025.**

FINAL ORDER:-

1. The petitioner seeks appointment of Sole Arbitrator under Section 11 of Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act').

2. The contention of petitioner is that he entered into an agreement with respondent for drawing, designing, manufacturing, procuring, supplying, erecting and commissioning machinery and equipments required for sugar factory and power generation plant. The petitioner has paid an amount of Rs.1,53,00,000/- to respondent. The respondent furnished guarantee execution of work. However, he failed to comply terms and conditions of agreement, hence, petitioner called upon respondent to refund amount paid. The respondent handed over

cheques towards part of outstanding dues. However, said cheques has been dishonored. On 01.01.2025, petitioner issued notice to respondent under Section 11 of Arbitration Act invoking arbitration clause in agreement. Despite service of notice, respondent failed to respond. Hence, this Arbitration Petition.

3. The respondent appeared and filed affidavit-in-reply opposing appointment of Arbitrator, mainly on ground that no arbitrable dispute arises for reference, as petitioner's claim is time barred.

4. Heard Mr. Sarthak Diwan, learned Advocate appearing for petitioner and Mr. Vinay Kadam, learned Advocate appearing for respondent.

5. Mr. Diwan, learned Advocate in support of his submissions relies upon observations of Supreme Court in case of ***SBI General Insurance Company Limited Vs. Krish Spinning***¹.

6. Undisputedly, petitioner and respondent entered into an agreement dated 12.11.2021. The respondent has agreed for procuring and commissioning equipments for sugar factory and power generation plant as required by petitioner. The agreement contained Clause No.21, which states as under:

"21. ARBITRATION:

If at any time there should be any question, dispute or difference between the parties in respect of any matter arising out of or in relation to this Agreement, either party may give to the other party notice in writing of the existence of such question, dispute or difference and the same shall be referred

¹ (2024) 12 SCC 1.

to arbitration of a single arbitrator, when the parties may agree upon, otherwise to two arbitrators, one to be nominated by each party. The two arbitrators appointed by the parties shall before proceeding with the reference, appoint a referee, who will act as the presiding Arbitrator. The award of the arbitrators shall be final and binding on the parties and be accepted by them.

This reference to the arbitrators shall be deemed to be a reference, under the provision of The Arbitration and Conciliation Act 1996 and the rules made there under and any statutory modifications or re-encashments thereof that may be made from time to time and actually in force at the time of reference.

The cost of arbitration shall be borne by the parties as may be decided upon by the arbitrators. Jurisdiction and Place for arbitration will be Kolhapur (Sahyadri Sahakari Sakhar Karkhana Ltd., Indumatinagar, Dhamod, Tal. Radhanagari, Dist. Kolhapur- 416211 State Maharashtra) or its registered office of Sahyadri Sahakari Sakhar Karkhana Ltd., Indumatinagar at Kolhapur.”

7. There is no serious dispute as to existence of arbitration agreement between parties. The learned Advocate appearing for respondent endeavours to contend that since petitioner's claim has been barred by limitation, dispute is not referable in pursuance to arbitration clause. Pertinently, law on this point is fairly settled. At this stage, while deciding application for appointment of Arbitrator, this Court is not expected to conduct an intricate evidentiary enquiry into question whether claims raised by applicant are time barred. It is always desirable that such question should be left open for determination of Arbitrator. *Prima facie*, this Court finds that there was correspondence between parties for refund of amount. The petitioner is coming with a case that cheques were given by respondent

towards part of amount to be refunded, but dishonored. The present petition is filed within period of three years from date of cause of action. This Court finds that decision on point of limitation would require recording of evidence. At this stage, this Court cannot reach to definite conclusion, if claim of petitioner is within limitation. Eventually, issue whether petitioner's claim is within limitation can be relegated for consideration of Arbitrator. The Arbitrator can rule upon the same alongwith other issues to be considered during course of Arbitration. This Court need not delve into disputed questions of fact, which can be answered after due deliberation by Arbitrator. In result, there is no impediment in allowing petition. Hence, following order:

ORDER

a) Appointment of Arbitrator :-

By consent, Advocate Mr. Ruturaj Pawar, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties under Arbitration and Conciliation Act.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the Sole Arbitrator by Advocates for petitioner within one week from the date this order is uploaded.

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

Arbitrator : Mr. Ruturaj Pawar,
Advocate, Bombay High Court.

Address : Office No.305, 3rd Floor, Anand Business Center,
C. S. No.1835, 66E99 Ward,
Rajarampuri, 4th Lane, Kolhapur 416 008.

Phone : 9766035800.

Email : advrppawar@yahoo.com

(c) Disclosure :-

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

(d) Appearance before the Arbitrator :-

Parties will appear before the Sole Arbitrator on such date and at such place as 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 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 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 fees of Arbitrator will be borne by 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 arbitration should learned Sole Arbitrator find it necessary.

(k) **Venue and seat of arbitration :-**

Parties agree that venue and seat of the arbitration will be in Kolhapur.

8. Arbitration Petition is disposed of in these terms.

(S. G. CHAPALGAONKAR)
JUDGE