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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 178/2015

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9th July, 2015

M/S BIKANERWALA FOODS PVT. LTD. Petitioner
Through Mr. Rajiv Bansal, Advocate with
Ms. Arpita, Advocate

versus

MINISTRY OF TEXTILES Respondent
Through Mr. Jaswinder Singh, Advocate

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of an arbitrator in terms of clause 22 of an Agreement for License dated 05.07.2010 entered into between the parties and the relevant clause of which agreement reads as under:-

“22. Clarifications, Disputes & Settlement

22.1 That in case of any dispute arising between the licensor and the licensee in respect of the interpretation, conduct or performance of any terms and conditions of these presents, the same shall be referred to the sole arbitration of a person who may be appointed by the

Secretary Ministry of Textiles for the purpose, under the provisions of the Arbitration & Conciliation Act, 1996 as amended from time to time. It will not be no disqualification that Arbitrator appointed as aforesaid is or has been an employee of licensor and the award of the arbitrator will not be challenged or be open to question in any court of law on this account.

22.2 Both the parties hereto agree to be bound by the decision of the arbitrator and that the decision of the arbitrator shall be final and conclusive and not open to any challenge or review. Both the parties hereto expressly agree that the appointment of any person as arbitrator would not be invalidated or the decision of the arbitrator would not be vitiated merely on the ground of his/her being associated with DC(H) as one of the officers or in any other capacity whatsoever.”

2. Disputes have arisen between the parties with regard to renewal of license and the terms of renewal of such license, and the petitioner therefore issued a legal notice dated 04.06.2014 to the respondent to appoint an arbitrator. The respondent does not dispute that the notice dated 04.06.2014 has been received by it, but it is stated that the respondent has now by its letter dated 30.04.2015 appointed an Arbitrator Sh. A. Madhukumar Reddy, Joint Secretary, Ministry of Textiles, New Delhi and therefore this petition has become infructuous.

3. Learned counsel for the petitioner on the contrary argues that once the respondent has failed to appoint an arbitrator within a period of 30 days of

receipt of the legal notice dated 04.06.2014, the respondent loses the right to appoint an arbitrator in terms of Sections 11(5) and 11(6) of the Act. Reliance is placed by the petitioner upon a recent judgment of the Supreme Court of a Division Bench of three Judges in the case reported as ***Deep Trading Company Vs. Indian Oil Corporation & Others (2013) 4 SCC 35.*** In this judgment, a Division Bench of three Judges of the Supreme Court has considered the earlier judgments on the issue as to whether a respondent loses a right to appoint the arbitrator by not appointing the arbitrator after a period of 30 days, and it has been held that if the arbitrator is not appointed in terms of the legal notice within the stipulated period prescribed, the respondent loses the right to appoint the arbitrator. The relevant para of the judgment in the case of ***Deep Trading Company (supra)*** is para 19 and which reads as under:-

“19. If we apply the legal position expounded by this Court in *Datar Switchgears Ltd. v. Tata Finance Ltd.*: (2000) 8 SCC 151 to the admitted facts, it will be seen that the Corporation has forfeited its right to appoint the arbitrator. It is so for the reason that on 09-8-2004, the dealer called upon the Corporation to appoint the arbitrator in accordance with terms of Clause 29 of the agreement but that was not done till the dealer had made application under Section 11(6) to the Chief Justice of the Allahabad High Court for appointment of the arbitrator. The appointment was made by the Corporation only during the pendency of the proceedings under Section 11(6). Such appointment by the Corporation

after forfeiture of its right is of no consequence and has not disentitled the dealer to seek appointment of the arbitrator by the Chief Justice under Section 11(6). We answer the above questions accordingly.”

4. In view of the above facts of the present case, and the fault of the respondent by failing to appoint the arbitrator within a period of 30 days of receipt of the legal notice dated 04.06.2014 sent by the petitioner to the respondent, the ratio of the Supreme Court decision taken in the case of *Deep Trading Company (supra)* will squarely come into play and respondent has lost its right to appoint an arbitrator and therefore respondent did not have a legal right to appoint an arbitrator in terms of the letter dated 30.04.2015 which is placed on record appointing Sh. A. Madhukumar Reddy as an Arbitrator, as stated above.

5. Learned counsel for the parties, at this stage, agree that the arbitration be conducted by the Delhi International Arbitration Centre, Delhi High Court and as per the procedure of the said Centre.

6. Accordingly, Hon’ble Mr. Justice Anil Kumar (Retd.), Mobile No.9818000140, is appointed as an Arbitrator to enter upon and decide the disputes and differences which arose between the parties with respect to

renewal of the license of the petitioner by the respondent and all other related incidental aspects thereto.

7. Parties or any of them can approach the Delhi International Arbitration Centre, Delhi High Court along with the copy of the present judgment for conducting of the arbitration proceedings.

8. The petition is accordingly allowed and disposed of in terms of the aforesaid observations.

JULY 09, 2015
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VALMIKI J. MEHTA, J.