

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

IN ITS COMMERCIAL DIVISION

COMM. ARBITRATION PETITION (LODG.) NO. 261 OF 2017

Kats Euro Cafe LLP

.. Petitioner

Vs.

Abu Farhan Azmi

.. Respondent

Mr.Archit Jayakar a/w. Ms. Aakanksha Agarwal i/b Jayakar and Partners for petitioner.

Mr.Kashiff Khan-Husband of Partner of petitioner present.

Mr.Firoz Bharucha i/b Vijay V. Sonawane for respondent.

Mr.Abu Farhan Azmi-respondent present.

CORAM : K.R.SHRIRAM, J.

DATE : 22ND JUNE, 2017

P.C.

1 The petitioner and the respondent tendered Minutes of Order which reads as under :

MINUTES OF ORDER

1. *The Petitioner and Respondent have agreed that the abovementioned Arbitration Petition shall be disposed of amicably in the following terms.*

2. *The Respondent undertakes to remove himself, his servants, agents and employees from the Premises (i.e. Café Basilico Restaurant, Bandra) within 4 weeks from the date of*

this Order.

3. *The Respondent undertakes to provide a Bank Guarantee of Rs. 50,00,000 (Rupees Fifty Lakhs only) within 3 days from the date of this Order in this Hon'ble Court, as a security for compliance of his undertaking as per Clause (2) above (“**the Bank Guarantee**”).*

4. *Upon the Respondent complying with the undertaking as per Clause (2) above, the Bank Guarantee shall be forthwith released to him by this Hon'ble Court. Alternatively, if the Respondent does not comply with the undertaking in Clause (2) the Petitioner shall be at liberty to apply to this Hon'ble Court to have the Respondent forcibly removed from the Premises and also apply to the Hon'ble Court for orders directing encashment of the Bank Guarantee.*

5. *During the period of 4 weeks that the Respondent is permitted to shut down the Café Basilico outlet at Bandra in a smooth manner as proposed by him, he undertakes as under:*

(a) *He may continue to carry on the business of the Restaurant in the name of the brand Café Basilico, from the Premises;*

(b) *He shall ensure that all sales (i.e. cash and/or credit card sales) generated from the business of the Restaurant shall be deposited into the Account of Kats Euro Café LLP, being HDFC Bank Account No. 50200021944599 only*

- (c) *He shall maintain and handover all bills and invoices generated at the Restaurant;*
- (d) *He shall be solely responsible and liable for any liability incurred and/or accrued from the running of the Restaurant, during the said period of the 4 weeks;*
- (e) *He shall be solely responsible for all structural damage and/or damage or loss caused in the Restaurant and/or to any furniture or fixtures therein, during the said period of 4 weeks. The Petitioner however agrees to pay the suppliers of provisions to the Restaurant, within 45 days of receipt of bills and supporting documents, if any;*
- (f) *He shall permit the Partner(s) of the Petitioner to enter the Restaurant, at any time during business hours of the Restaurant upon giving 24 hours prior written notice, to inspect the same as well as monitor the sales generated therefrom;*
- (g) *He shall not remove any of the movable items, furniture, fixtures or any other item forming part of the inventory of the Restaurant, outside the Premises;*
- (h) *He shall not be permitted/entitled to make any payment and/or any promise of payment, on behalf of the Petitioner to any third person, including any vendor, employee, staff, Licensor, authority, government department, or any other person in any manner whatsoever;*
- (i) *He shall not operate the Credit/Debit Card Machine bearing TID No. 40075092 or any other*

Credit/Debit Card machine that is not linked to the Account of Kats Euro Café LLP;

6. *On the expiration of 4 weeks and after the Respondent removed himself from the Restaurant, the Petitioner undertakes not to carry on the business of the Restaurant by the name of 'Café Basilico'. However, the Petitioner shall be entitled to carry out a Restaurant, by any other name as it deems fit.*

6a. *The Petitioner agrees that it has no right to conduct business under the brand Café Basilico.*

7. *On the expiration of 4 weeks, the Parties shall reconcile the accounts of the Restaurant. However, in the event of any disputes, the same shall be determined as per Clause (8) below;*

7a. *However, the Petitioner shall keep apart 8% Franchise Fee, as defined in Clause 5.1(ii) of the Franchise Agreement, for the 4 week period subject to the outcome of the Arbitration.*

8. *The Parties agree that all past and present disputes between then as well as any dispute that may arise during the period of 4 weeks, shall be referred to the Arbitration of a Sole Arbitrator being Mr. Justice V.M. Kanade (Retd).*

9. *The Parties shall be entitled to make all their claims before the Learned Arbitrator and this Order is being passed*

without prejudice to all the rights and contentions of the parties.

2 The Minutes of Order signed by the Partners of the Petitioner, the Respondent and their respective advocate/counsel, is also taken on record and marked 'X' for identification. The bank guarantee to be issued in favour of Prothonotary and Senior Master, High Court, Bombay in usual format.

3 The undertakings are accepted and so ordered.

4 The Petition stands disposed accordingly.

(K.R. SHRIRAM, J.)