

In the High Court of Judicature at Madras

Dated : 10.03.2017

Coram :

The Hon'ble Mr.Huluvadi G.Ramesh, Acting Chief Justice

O.P.No.104 of 2017

M/s.Barista Coffee Company Limited,
Registered Office at 83 – A, Central Avenue,
Sainik Farms, New Delhi – 110 062
by its Branch Office at
No.29/4, 25th Cross Street,
Besant Nagar, Chennai-600 090
by its Area Business Manager
Mr.Ram Kumar

.. Petitioner

-vs-

M/s.Bohemian Destinatis Pvt. Ltd.,
Old No.4, New No.7
Khader Nawaz Khan Road,
Chennai-600 006,
Tamil Nadu.

.. Respondent

Petition filed under Section 11 (5) & (6) of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator in accordance with the aforesaid Act.

For Petitioner : Ms.Anita Thomas

For Respondent : Notice Served
No Appearance

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ORDER

This petition has been filed seeking to appoint an Arbitrator to adjudicate upon the disputes arisen between the petitioner and the respondent.

2. The case of the petitioner is that the petitioner is carrying on business of running and operation chain of Espresso Bar/Cafe under the trademark BARISTA at national and international level. The respondent had entered into Leave and License Agreement dt. 25.11.2009 with the petitioner for granting permission to occupy and operate from the property of the respondent situated at the ground floor of Old No.4, New No.7, Khader Nawaz Khan Road, Chennai-6. At the time of execution of Leave and License Agreement, the petitioner deposited refundable security deposit of 10 months license fee of Rs.13,00,000/-. As per the terms and conditions of the agreement, the security deposit is refundable by the respondent at the time of vacation and handing over of the premises by the petitioner. On 3.11.2015, termination letter was issued. Subsequent to the issuance of termination letter, the petitioner had vacated the premises and handed over the same to the respondent on 27.2.2016. The respondent had failed to

refund the balance of security deposit. Clause 10.13 of Leave and License Agreement provides for settlement of all disputes or differences by way of arbitration. On 02.8.2016, the petitioner issued notice invoking arbitration clause. Despite receipt of the notice, the respondent has not responded. Hence, the present petition.

3. Heard the learned counsel for the petitioner.

4. The private notice taken by the petitioner was served on the respondent. The learned counsel for the petitioner has produced the affidavit of service. When the matter is called, no one has entered appearance.

5. Clause 10.13 of Leave and License Agreement reads as under:-

“30. Any dispute or difference between the parties shall be resolved amicably at the first instance. Unresolved disputes, controversies, contests, disputes, if any shall be submitted to arbitration. The Arbitration shall be conducted in

accordance with the provisions of the Arbitration and Conciliation Act, 1996 along with the Rules there under and any amendment thereto. The arbitration shall be conducted in English. The decision/award of the arbitrator shall be final/conclusive and binding on the Parties. The seat of the arbitration shall be at Chennai.”

6. Since the agreement contains an arbitration clause and disputes having arisen between the parties and according to the petitioner, the jurisdiction is of Chennai Courts, I am of the view that the matter is liable to be referred to arbitration.

7. The learned counsel appearing for the petitioner submits that since the claim is around Rs.15.00 lakhs, a retired District Judge may be appointed as an Arbitrator in this matter.

8. I, thus, appoint Mr.G.Palaniappan, a retired District Judge (Mobile No.9443335815), No.2B, Owner's Court, Montieth Street, Montieth Road, Egmore, Chennai-8, a retired District Judge as the Sole

Arbitrator, to enter upon the reference and adjudicate the disputes *inter se* the parties. The arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre. In case of non-availability of the Madras High Court Arbitration Centre, the case may be held at Nani Palkhivala Arbitration Centre at No.22, Karpagambal Nagar, Mylapore, Chennai-600 004. The appearance of parties before the Madras High Court Arbitration Centre is fixed on 03.04.2017 at 10.30 A.M. The Madras High Court Arbitration Centre is directed to intimate the date of commencement of proceedings to the respondent.

9. The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(H.G.R., ACJ.)
10.03.2017

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Note: Mark a copy to

- (i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.
- (ii) The Arbitrator, as referred above.

The Hon'ble Acting Chief Justice

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