

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.193 OF 2017**

Hairport Services LLP and Ors.

....Applicants

Vs.

F Salon India LLP

....Respondent

Ms. Shubhra Swami I/b. Lex Legal and Partners for applicants.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 2nd NOVEMBER 2018

P.C.:

1 This application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act).

2 Applicant no.1 and respondent had entered into an agreement dated 1st June 2015 called Unit Franchise Agreement. Under this agreement, applicant, which is a leading provider of salon and wellness services, agreed to lease applicant's business know-how to respondent. The terms and conditions are reflected in the Agreement dated 1st June 2015. Disputes arose between the parties. It is stated in the application that attempts were made by applicants to settle and resolve the disputes amicably with respondent. As it did not materialize, applicant through its advocate's letter dated 14th July 2017, invoked arbitration in which at paragraph 14 it is also recorded that several calls and meetings took place between the parties and some time in May 2016 respondent agreed to return the amounts payable to applicant. To this notice invoking arbitration, there is no reply from

respondent.

3 The arbitration clause, which is clause no.21 to the said agreement, reads as under :

21. ARBITRATION

21.1 Any and all disputes ("Disputes") arising out of or in relation to this Agreement between the Parties or arising out of or relating to or in connection with this Agreement or the performance or non-performance of the rights and obligations set forth herein or the breach, termination, invalidity or interpretation thereof shall be referred for arbitration in terms of the Arbitration and Conciliation Act, 1996 or any amendments thereof. Prior to submitting the Disputes to arbitration the parties shall resolve to settle the dispute/s through mutual negotiation and discussions. In the event that the said dispute/s are not settled, the same shall finally be settled and determined by arbitration in accordance with the Arbitration and Conciliation Act, 1996 or any amendment thereof.

21.2 In case of any disputes or differences arising between the Parties hereto with regards to interpretation of any of the terms and conditions of this Agreement then the same shall be referred to Arbitration under the provisions of the Arbitration and Conciliation Act, 1996 as amended till date and it is specifically agreed between the parties hereto that the Parties hereto may by mutual consent appoint a Sole Arbitrator and in case of disagreement, each Party shall appoint one Arbitrator and such 2(two) Arbitrators shall appoint a 3rd Arbitrator (Umpire). The order passed in such arbitration shall be final and binding on the Parties hereto. The venue for such Arbitration proceedings in respect of the said Licensed Premises under this Agreement shall be held at Mumbai alone and the arbitration proceedings shall be in English only.

21.3 The arbitral award shall be in writing and shall be final and binding on each party and shall be enforceable in any court of competent jurisdiction.

4 Application has been served upon respondent to which there is no reply. Nobody has entered appearance either. On 24th August 2018 the Court recorded that applicants' advocates state that respondent is trying to evade service and therefore, the local police station was directed to assist applicant's advocates in serving a copy of the said order and also directed

one Mr. Malik Kashif Khan, partner of respondent, to remain present in Court on 31st August 2018 at 3.00 p.m. Application did not get listed thereafter and on 30th October 2018 it was listed and stood over to 1st November 2018 and on 1st November 2018, it was stood over to today.

5 Ms. Swami tenders an affidavit of one Shridhar H. Shivane affirmed on 1st November 2018 confirming service of the order dated 24th August 2018 and also informing respondent that the application will be listed on 1st November 2018. Despite that, nobody has entered appearance for respondent or is present in Court for respondent or any affidavit in reply opposing the application is filed. Therefore, none of the averments in the application are controverted. I am also satisfied that there is an arbitration agreement as reflected in clause 21 of the agreement. Despite notice invoking arbitration, respondent has not responded.

6 Therefore, Mr. Prathamesh Kamat, an Advocate, having his office at Chambers of Mr. Rahul Narichania, senior advocate, 110, Yusuf Buildig, 1st Floor, M.G. Road, Fort, Mumbai 400 001 (mobile no.9833190164, email ID – prathameshmkamat@gmail.com), is appointed as Sole Arbitrator to arbitrate on all disputes and differences, including counter claim, if any, arising out of or in connection with or relating to Unit Franchise Agreement dated 1st June 2015. All rights and contentions of the parties are kept open, except the question of jurisdiction of the arbitrator.

7 The fees to be fixed by the Arbitrator, administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by applicants and 50% by respondent and the same shall be subject to cost in the arbitral proceedings.

8 The Arbitrator to communicate in writing to the Advocate for applicant with copy to respondent the disclosures as required under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 within 15 days of receiving a copy of this order from any of the party.

9 Liberty to apply.

10 Application accordingly stands disposed.

(K.R. SHRIRAM, J.)