

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P. NO.915 OF 2018

Pepsico India Holdings Private Limited,
Level 3-6, Pioneer Square,
Sector 62, Gurgaon 122101
Through its Authorized Representative,
Mr.T.V.Sivaramakrishnan

.. Petitioner

-vs-

Vasantha Bhavan Hotel India Pvt.Ltd.,
Through its Chairman Mr.M.Ravi,
34, Developed Plot South Phase
Guindy, Industrial Estate,
Guindy, Chennai 600034.

.. Respondent

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying to allow this petition and appoint a Sole Arbitrator as proposed by the petitioner in the notice invoking arbitration dated July 7, 2018, for adjudicating the dispute that has arisen between the petitioner and the respondent under the agreement dated March 13, 2012 and award the cost of present proceedings to the petitioner.

For Petitioner : Mr. Vinod Kumar
For Respondent : Mr.Vijay Subramanian

ORDER

This Original Petition is filed by the petitioner seeking for appointment of a Sole Arbitrator as proposed by the petitioner in the notice invoking arbitration dated July 7, 2018, for adjudicating the dispute that has arisen between the petitioner and the respondent under the agreement dated March 13, 2012

2. The petitioner is a company incorporated under the laws of USA, engaged in the business of manufacturing and selling non alcoholic beverage under the brand names such as PEPSI, MIRINDA, 7UP, MOUNTAIN DW, TROPICANA, packaged drinking water AQUAFINA, and food products under the brand names LAYS, KURKURE etc. The respondent is engaged in the business of running and operating restaurants and food outlets and canteens in Chennai and other parts of the country .

3. The petitioner and the respondent entered into an agreement on 13.3.2012 under which, the respondent was to act as Key Account for sale of the products of the petitioner, specifically provided under Annexure B of the Agreement.

4. Dispute arose between both parties with regard to non-refund of the utilised sum of Upfront Discount.

5. Clause 8 of the Agreement provides for resolution of disputes through an Arbitrator.

6. The petitioner issued a legal notice dated 7.7.2018 invoking arbitration clause calling upon the respondent to give its consent to appoint Mr. Justice K. Chandru, Retired Judge of this Court as sole arbitrator to resolve the dispute between them. Despite lapse of a period of more than 30 days, the respondent neither accepted the name of the arbitrator suggested by the petitioner, nor suggested any other alternative. Hence the petitioner has come forward with this petition to resolve the disputes inter se the parties.

7. Admittedly, clause 8 of the agreement provides for resolution of disputes through arbitration which read as under;

8 ARBITRATION;

8.1 Any dispute or difference or claim arising out of or in relation this agreement including the construction, validity, performance or breach thereof which the parties cannot settle by mutual agreement shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and any other statutory amendment thereto from time to time.

8.2 The award of the arbitrator/s shall be final and binding on both the parties.

8.3 The Arbitration *shall be held at Chennai.*

8. It is seen that the petitioner sent a notice to the respondent invoking arbitration clause appointing a nominee arbitrator, but the respondent neither replied for the same, nor accepted for the nominated arbitrator.

9. In the above stated facts and circumstances of the case, this Court is inclined to appoint a retired Judge of this Court be an arbitrator to resolve the disputes.

10. Accordingly, I appoint **Mr. Justice K. Chandru**, former Judge of this Court, residing at No.4-B, Kanchana, 78, St. Marys Road, Abiramapuram, Chennai - 600018, Mobile 9444390962, Phone:044-24990139, as the Sole Arbitrator to enter upon the reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible within a

period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration as well as schedule of expenses which shall be borne by both parties equally. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

11. This Original Petition is ordered accordingly. No costs.

17.12.2018

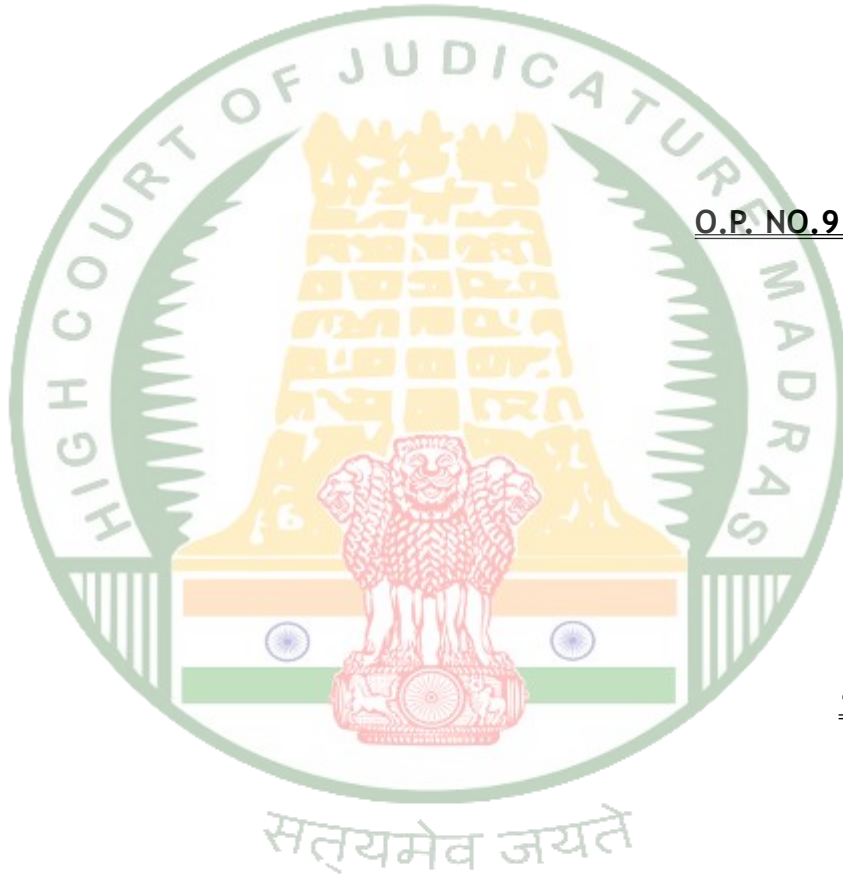
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M.GOVINDARAJ, J.

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