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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 30.11.2018

\+ **ARB.P. 447/2018**

MATAYI FOODS LTD. ..... Petitioner

Through: Mr. Alok Singh with Mr. Deepak Shukla, Advocates.

versus

WHITE FEATHERS RESTAURANTS PVT. LTD. ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a petition filed under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (in short "1996 Act") for appointment of an Arbitrator in the disputes obtaining between the parties herein. Notice in this petition was issued on 01.06.2018. Notice was made returnable on 23.08.2018. On that date there was no representation either on behalf of the petitioner or the respondent. Today, though, the petitioner is represented by a counsel, there is no representation on behalf of the respondent.

2. Broadly, the facts which are required to be noticed in order to adjudicate upon this petition are as follows:

3. It appears that the respondent company obtained a sub-lease of a premises located in TDI Town Square Mall situated at Nehru Place Metro Station, New Delhi. The space was owned, according to the petitioner, by an entity going by the name TDI Infrastructure Ltd. The respondent

company, it is averred, had obtained rights under a Food Operators Agreement dated 21.01.2013 executed between itself, M/s. V Cubed Pvt. Ltd. and M/s. Sapphire Projects Ltd. These are companies which, according to the petitioner, are owned and controlled by TDI Infrastructure Ltd.

4. Based on the said agreement, the respondent company entered into a Franchise Agreement dated 30.01.2013 ('F.A.') with the petitioner. The petitioner's obligation under the F.A. was to run a fine dining restaurant under the trade mark "Moti Mahal Delux".

4.1 It is averred by the petitioner that the tenure by the F.A. was 12 years from the date of the restaurant was opened. The F.A., however, provided that the tenure could be curtailed upon termination of the said agreement.

4.2 This apart, it is averred that there is also a provision for extending the tenure by a period of 3 years based on mutually agreed terms.

5. It is the petitioner's case that under the F.A. it remitted to the respondent company a refundable security in the sum of Rs.6,90,000/- comprising rental security in the sum of Rs.6,00,000/-, electricity connection security in the sum of Rs.40,000/-, and billing system security in the sum of Rs.50,000/-.

5.1 This apart, the petitioner claims that a sum of Rs.3,00,000/- was also remitted to the respondent company as non-refundable Franchise fee at the time of execution of the F.A. Under the F.A., the petitioner was required to pay royalty at the rate of 6% on the gross monthly revenue earned from the operating the aforementioned restaurant.

6. It is the petitioner's stand that it made an investment of Rs.2,50,000/- prior to commencement of the operation of the restaurant.

The investment, inter alia, included cost incurred in purchasing kitchen equipment, refrigeration unit, interiors, cutlery, RO system and packaging material.

7. The petitioner also claims that because of increase in rentals which was payable by the respondent company to the owner of restaurant, the restaurant became a commercially unviable proposition.

7.1 I may only indicate that the petitioner has not articulated clearly as to what was the increase in the rental which imparted the royalty payable by the respondent company to the petitioner.

8. Be that as it may, this became their trigger for the petitioner to vacate the restaurant. Accordingly, the petitioner gave notice for vacating the restaurant on 25.08.2016 and 04.02.2017.

9. The petitioner claims that since it had an apprehension that the respondent company would sell the equipment and appliances, etc. lying in the restaurant it decided to file an application under Section 9 of the 1996 Act before the District Court in Delhi. The record shows though that the said petition was withdrawn on 06.03.2018.

10. The petitioner, in the interregnum on 30.06.2017 had issued a notice triggering the arbitration agreement contained in the F.A. The arbitration agreement is incorporated in clause 22(a) of the F.A. For the sake of convenience the same is extracted herein: -

> "*22(a) each of the Parties designate a member and the two designated members will in turn, by consensus, elect a third member, who will act as president of the tribunal of arbitration.*"

11. Having regard to the fact that the respondent company despite notice has neither entered appearance nor has it filed a reply, the assertion made in the petition have gone unrebutted. In these circumstances, I am

inclined to allow the prayer made before me and appoint an Arbitrator in the matter.

12. Accordingly, Mr. Amit Andley, Advocate (Mobile No. 9811151686) is appointed as Arbitrator to adjudicate upon the dispute obtaining between

the parties. The learned Arbitrator will be paid his fee in accordance with fourth Schedule appended to the 1996 Act.

13. The Registry will despatch a copy of the order to the learned Arbitrator as well as both the parties.

RAJIV SHAKDHER, J

NOVEMBER 30, 2018

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