$~16

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

\+ O.M.P. (COMM) 363/2018 & CAV 758/2018 & IAs 11255-57/2018

KBSH PVT. LTD. ..... Petitioner

Through: Mr.Manish Srivastava, Adv.

versus

SOLAR CREATIONS PVT. LTD ..... Respondent

Through: Mr. Balbir Singh, Sr. Adv. with Ms.Iti Agarwal, Ms.Tamanna Goyal, Mr.Sai Krishnan, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

<u>O R D E R</u>

% **06.09.2018**

<u>CAV 758/2018</u>

As the counsel for the respondent appears on an advance notice, Caveat stands discharged.

<u>O.M.P. (COMM) 363/2018 & IAs 11255-57/2018</u>

Issue notice. Notice is accepted by Ms.Iti Agarwal, Advocate on behalf of the respondent.

With the consent of the parties, the petition has been taken up for final hearing at this stage itself, as a limited issue is involved.

The grievance of the petitioner is on two counts; firstly, that the Arbitrator, while awarding a sum of Rs.72,52,912/- in favour of the petitioner, has not awarded any interest thereon and has not even given any reason for non-grant of such interest.

The Arbitrator in the Impugned Award has given the following reasons for not granting interest to either party:

"132. The peculiar facts of this case do not warrant the grant of interest to any party."

It is not denied by the petitioner that in terms of the Franchise Agreement, on a reconciliation of the amounts, the petitioner may eventually have to pay certain amounts to the respondent. The Arbitrator has, therefore, based on his findings on various issues, deemed proper not to award interest in favour of either party. Award of interest is a matter of discretion, which the Arbitrator in the present case has exercised and thus, taking into account the entire gamut of disputes so raised before him, I do not find any reason to interfere with the same.

Counsel for the petitioner has placed reliance on the judgment of this Court in ***S.K.Malhotra (HUF) vs. Man Mohan Modi*** 166 (2010) DLT 723 to contend that as the petitioner was deprived of the use of money to which it was legitimately entitled, it has a right to be compensated for the period of deprivation at least from the date of institution of the arbitration proceedings till the date of passing of the Award.

I have considered the submissions made by the counsel for the petitioner, however, in the peculiar facts of the present case where the Arbitrator has held that even the respondent would be entitled to certain amounts, I do not feel that the above quoted judgment would have any application especially in light of the discretion vested in the Arbitrator under Section 31 (7) of the Act.

The only other grievance of the counsel for the petitioner is that the Arbitrator has, after determining the Fixed Operating Expenses for purpose of application of Clause 8.7 of the Franchise Agreement, directed as under:-

> *"113. Therefore, after accounting for the 30 percent of the revenue share under section 8.4 already received by the Respondent, it is only entitled to receive the balance under section 8.7."*

He submits that this is not a correct application of Clause 8.7 of the Franchise Agreement.

Clause 8.7 of the Franchise Agreement is quoted hereinbelow:

> *"8.7 In the event monthly sales is lesser than the fixed operating expenses [which is agreed to be maximum amount of Rs.17,00,000/- (Rupees Seventeen Lakh Only) plus applicable taxes]; the Franchisor will cover the shortfall either through (i) setting higher margins or (ii) by providing a credit note. The fixed operating expenses shall mean to include only the rent, electricity and any other fixed operating expenses collectively or 30% margin on MRP monthly Sales, whichever is higher. It is further agreed between parties that Franchisor will cover the shortfall, if any, either through (i) setting higher margins or (ii) by providing a credit note as the case may be, within 40 days of reconciliation of accounts in respect of particular month, in which such shortfall is claimed."*

It clearly records that there has to be a monthly exercise of reconciliation for purpose of determining the amount payable, if any, by the petitioner to the respondent. Learned senior counsel for the respondent also submits that it was for the Arbitrator to have determined the final figure of amount, if any, payable by the petitioner to the respondent.

In view of the submissions made and with the consent of the parties, the Impugned Award, in so far as the direction contained in paragraph 113 of the Award is concerned is set aside.

With the consent of the parties, the parties are referred back to the Arbitrator for determining the amount payable, if any, by the petitioner to the respondent strictly in accordance with Clause 8.7 of the Franchise Agreement dated 14th February, 2014.

The parties shall be at liberty to avail all remedies as may be available to them in law against the Award that may now be passed pursuant to the present order.

It is made clear that the other findings of the Arbitrator in the Impugned Award are not being interfered with.

The petition is disposed of in the above terms.

Dasti.

NAVIN CHAWLA, J

SEPTEMBER 06, 2018
RN