

\$~8

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

+ **ARB.P. 777/2017**

**SELL ADS**

..... Petitioner

Through: Mr Siddharth A. Dharmadhikari,  
Advocate.

versus

**JUBILANT FOODWORKS LTD.**

..... Respondent

Through: Mr Sapan K. Mishra, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

%

**08.03.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter the Act), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties regarding "Leave and License Agreement" dated 04.07.2012 (hereafter 'the Agreement').

2. The Agreement includes an arbitration clause, which is set out below:-

**"10. DISPUTE RESOLUTION**

10.1 The parties agree to make good all breaches of the terms and conditions of this Leave and License Agreement on either of them (affected party) giving notice, in writing, of such or breach to other party and the other party shall remedy such breach(es) within four weeks of the receipt of such notice and the parties shall make their best endeavor to solve all possible disputes, controversies, and such breaches and / or claims arising out therefrom or in connection with this Agreement amicably by way of negotiations with a view of a fair treatment by both parties towards one

another.

- 10.2 In case of any dispute or difference arising out of or in relation to this Leave and License Agreement, then the same shall be resolved and settled with the provision of the Arbitration and Conciliation Act 1996 or any statutory modification or re-enactments thereof. The place of Arbitration shall be New Delhi.
- 10.3 The parties to this Agreement agree that the Court(s) in Delhi only shall have exclusive jurisdiction regarding any matter arising out of or related to this Agreement, subject always to the Arbitration Clause.”

3. In view of the disputes that are stated to have arisen between the parties, the petitioner caused a notice dated 29.04.2017 to be issued to the respondent calling upon the respondent to pay an aggregate sum of ₹90 lacs (₹ 40 lacs towards erecting the premises bearing No. B-2/R-5 and R-6 and ₹50 lacs as compensatory damages) for wilful breach of the Agreement. In addition, the petitioner also called upon the respondent to pay a sum of ₹7,45,706/- towards use and occupation charges of the premises in question from November, 2016.

4. The learned counsel appearing for the respondent does not dispute the existence of the Agreement. He, however, states that the disputes raised by the petitioner are not arbitrable. He also has referred to the decision of the Supreme Court in ***Himangni Enterprises v. Kamaljeet Singh Ahluwalia: (2017) 10 SCC 706*** in support of his contention.

5. The learned counsel appearing for petitioner counters the aforesaid contention that the disputes raised by the petitioner are not arbitrable.

6. In view of the introduction of Sub-section 6A in Section 11 of the Act, which was introduced by virtue of the Arbitration and Conciliation (Amendment) Act, 2015, the scope of examination before this Court is limited. At this stage, this Court is called upon to examine whether the arbitration agreement exists between the parties. In this case, the same is not disputed. It is also seen that despite issuing the notice invoking the arbitration clause, the respondent has not concurred with the appointment of an arbitrator. In the circumstances, the present petition is liable to be allowed.

7. In view of the above, Mr Rakesh Kapoor, Retired. District & Sessions Judge, Delhi (Mobile No. 9910384621) is appointed as the sole arbitrator to adjudicate the disputes that have arisen between the parties in connection with the Agreement. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under section 12(5) of the Act. The Arbitrator shall fix his fees in consultation with the parties having regard to Schedule IV of the Act.

8. The parties are at liberty to approach the Arbitrator for further proceedings. It is clarified that all the contentions of the parties are reserved including the respondent's contention that disputes are not arbitrable.

9. The petition is disposed of in view of the above terms.

**VIBHU BAKHRU, J**

**MARCH 08, 2018**  
**RK**