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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO.59 OF 2019**

Allied Blenders And Distillers Pvt.Ltd.	..Applicant
Vs.	
Colona Blenders And Bottlers (India) Private Limited	..Respondent

Mr.Priyank Kapadia with Siddha P. and Ms.Mahafrin Mehta i/b. M/s.M.
Mulla Associates for Applicant.

**CORAM : G.S. KULKARNI, J.
DATE : 19th MARCH, 2019**

P.C.:

Heard learned Counsel for the applicant.

2. Respondent is stated to be served, however, the respondent is not represented. Learned Counsel for the applicant has placed on record two affidavits of service, one is of Ms.Surekha Gaur dated 6 March 2019 stating that service came to be effected by forwarding a copy by speed post and report of the postal authorities is that the notice of this proceeding is received by the respondent on 27 February 2019. Another affidavit of service of Ms.Mahafrin Mehta placing on record that there is also a service by e-mail on 4 March 2019.

3. Learned Counsel for the applicant has drawn my my attention to the previous round of proceedings as filed by the applicant under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the

ACA”) (Commercial Arbitration Petition (L.) No.1520 of 2018) in which the applicant had moved for interim reliefs pending arbitral proceedings to state that in those proceedings also respondent despite receipt of notice, failed to appear. The Court's attention is drawn to the order dated 17 December 2018 passed in the said petition in which the Court has made the following observations while disposing of the said petition whereby interim reliefs were granted in favour of the applicant:-

“11. This petition was moved for urgent reliefs on 10 December 2018, as the respondent was not appearing and although it was stated that the private service was effected by the Advocate for the petitioner on the respondent, this Court passed the following order:-

“ Issue notice to the respondents, returnable on 13 December 2018. Hamdast is permitted.

2. The respondents are put to notice that on the adjourned date of hearing, the Court shall hear the parties on prayers for ad-interim/interim reliefs as prayed in the application.

3. Stand over to 13 December 2018.”

12. Again the matter was listed before the Court on 13 December 2018 and was adjourned for today, so that sufficient time was available to the respondent to appear in the present proceedings. In regard to the proof of service of the petition on the respondent, affidavit of service dated 13 December 2018 of Mr.Avinash Pate is placed on record. Another affidavit of service dated 17 December 2018 of Miss Akshita Palvia, Advocate of the petitioner, is placed on record setting out the steps taken to serve the respondent along with the documents. It thus appears that the respondent has sufficient notice of the proceedings and is not interested to appear and/or defend these proceedings.”

4. Learned Counsel for the applicant accordingly submits that the approach of the respondent is not to appear in the proceedings. It is

clear from the said two affidavits of service that the respondent is served quite sometime back and has sufficient notice of the present application. However, the respondent has failed to appear. Accordingly, this application under Section 11 of the ACA is taken up for hearing.

5. By this application, the applicant has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties which are stated to have arisen under the agreement dated 21 June 2017 (Exhibit A to the petition). Clause 10 of the said agreement is stated to be the arbitration agreement which reads thus:-

“10. The Parties hereto shall endeavour to settle any disputes and differences arising out of or in connection with this Agreement within a period of 30 (thirty) days from the date of such dispute being raised by a Party. All disputes which cannot be amicably settled within the aforesaid period shall be referred to arbitration. The arbitration shall be conducted by a sole arbitrator to be mutually appointed by both Parties hereto. The arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996. The venue of the arbitration shall be Mumbai. The arbitration shall be conducted in the English language.”

6. Learned Counsel for the applicant submits that the agreement dated 21 June 2017 came to be entered between the parties as the Manufacturing Agreement dated 1 April 2014 as entered between the parties was terminated in view of the notification dated 5 April 2014 as issued by the Government of Bihar. The agreement in question dated 21 June 2017 was entered in order to effect a complete termination of the manufacturing agreement. The case of the applicant

is that there is breach on the part of respondent in complying with the terms and conditions of the said agreement and accordingly, by the applicant's letter dated 2 January 2019 the applicant invoked the arbitration agreement and sought to appoint a sole arbitrator to adjudicate the disputes and difference between the parties. As there was no response to the letter dated 2 January 2019 within a period of 30 days as contemplated under the provisions of Section 11 of the ACA, the present application has been filed.

7. Having heard learned Counsel for the applicant and having perused the record and agreement in question, it is clear that there is an arbitration agreement between the parties as contained in clause 10 of the arbitration agreement dated 21 June 2017. There is also a valid invocation of the arbitration agreement by the applicant's notice dated 2 January 2019, however of no avail. The respondent is duly served as noted above and appear to be not interested to contest the present proceedings. Thus the averments as made in the application are required to be taken as uncontroverted.

8. In the above circumstances, the application is required to be allowed. Hence the order:-

ORDER

(i) Mr.Justice S.J. Vazifdar, Former Chief Justice of Punjab and

Haryana High Court, is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties under the agreement dated 21 June 2017;

(ii) The learned sole prospective arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(iv) All contentions of the parties on merits of the matter are expressly kept open;

(v) The application is disposed of in the above terms. No costs.

(vi) Office to forward a copy of this order to the learned Arbitrator on the following address:

address: 24, Maison Belvedere, 107, Maharshi Karve Road,
Mumbai – 400 020.

Contact No. 9820102088

[G.S. KULKARNI, J.]