

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.140 OF 2018

ORDER

M/s.Sneha Farms Private Limited, Hyderabad, seeks appointment of a sole Arbitrator under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), to resolve its claim for over Rs.1.00 crore raised against M/s.Yar Gun Enterprises Private Limited, Chandigarh.

The applicant company's case is as follows: It is engaged in the business of broiler integration, processed chicken, chicken retailing, etc. It obtained an order from the Indian Army for supply of 5959 MTs of frozen chicken at various places. While so, the respondent company approached the applicant company offering to provide logistical and related services for supply of the frozen chicken to the Indian Army. Both parties agreed upon the terms and conditions for supply of such services by the respondent company and reduced the same into a written distribution agreement on 01.04.2017. The term of the distribution agreement was one year commencing from 01.04.2017. However, after commencement of the contract term, the respondent company informed the applicant company that its investors had backed out and requested for a hand loan for setting up the necessary infrastructure to enable the applicant company to deliver the frozen chicken to the Indian Army. As its contract term with the Indian Army had already commenced and the applicant company was suffering heavy risk expenditure owing to the failure of the respondent company to provide necessary infrastructure, the applicant company agreed to give a hand loan of Rs.75,00,000/- to the respondent

company for establishing the necessary infrastructure. A Memorandum of Understanding (MoU) was executed by the parties in March, 2017, recording the terms and conditions under which the applicant company gave the hand loan. Thereby, the respondent company agreed to repay the amount within six months from the date of execution of the MoU. The hand loan amount was accordingly released by the applicant company. However, the respondent company failed to perform its obligations under the distribution agreement dated 01.04.2017. Disputes having arisen between the parties in this regard, the applicant company issued legal notice dated 24.08.2018 to the respondent company invoking the arbitration clause in the distribution agreement dated 01.04.2017 and proposing the name of a retired Judge as the sole Arbitrator to adjudicate the dispute that had arisen between the parties. In reply, the respondent company addressed letter dated 05.10.2018 stating that it did not agree to the appointment of a sole Arbitrator and that it was in the process of appointing its own Arbitrator, as per the distribution agreement, and would inform the applicant company in due course of time. The applicant company again got addressed legal notice dated 25.10.2018 to the respondent company referring to its letter dated 05.10.2018 and pointing out that no further correspondence had been received from the respondent company and asserted that its nomination of a retired Judge, as named in its earlier notice, should be treated as a nomination on its behalf and called upon the respondent company to nominate its own Arbitrator within ten days, failing which the applicant company cautioned the respondent company that it would approach the Court. There was no response to this letter leading to the filing of this application.

Notice was ordered upon this Arbitration Application on 28.12.2018 and Sri K.V.Rusheek Reddy, learned counsel for the applicant company, was permitted to serve notice upon the respondent company by registered post with acknowledgement due. Thereupon, the learned counsel effected service of notice upon the respondent company and filed an acknowledgement card in proof thereof. Despite such service, the respondent company did not choose to enter appearance before this Court.

Perusal of the distribution agreement dated 01.04.2017 reflects that the following dispute resolution mechanism was put in place by the parties:

'Dispute Resolution

That in case of any kind of dispute amongst the parties to this agreement and if the Parties are unable to resolve their matter amicably, then both the Parties shall have a right to refer such dispute to a Sole Arbitrator to be jointly appointed by their mutual consultation. In the event of the Parties not being able to agree on a sole arbitrator, each Party shall be entitled to appoint one Arbitrator and the two appointed Arbitrators shall appoint a third Arbitrator, who shall act as the Presiding Arbitrator. The Arbitration shall be conducted in accordance with the Arbitration & Conciliation Act, 1996 for the time being in force or any statutory modification or re-enactment thereof.

That the decision of the arbitrator/majority of the arbitrators (as the case may be) shall be final and binding.

That the Arbitration proceedings shall be conducted in English and the venue shall be at Hyderabad unless otherwise mutually agreed to between the Parties. Further if need be, the Final Award of the Arbitration also shall be executable through the exclusive jurisdiction of the competent court at Hyderabad and accordingly the parties to this agreement shall be bound to file any objection against the award of the arbitrator before the competent court at Hyderabad only and not any other station/place.

That the costs of Arbitration shall be equally shared between the Parties. The Parties shall bear and pay their respective costs and expenses incurred in relation to the arbitration.

That the Arbitration award shall be the exclusive remedy of the Parties for all claims, counterclaims, issued or accounting presented to the Arbitrator.

That each Party, shall be entitled to seek necessary and appropriate interim injunctive relief pending the outcome of the

Arbitration or any other temporary measures from the Courts of competent jurisdiction at Chandigarh, to enjoin the other Party from taking certain actions, which allegedly, infringe the rights of the party bringing such claim, provided that any proceedings and decisions as to the merits of the dispute are exclusively governed and resolved by Arbitration in accordance with this clause.'

In terms of Section 11(5) & (6) of the Act of 1996, as amended by Act 3 of 2016 with effect from 23.10.2015, in an arbitration with a sole Arbitrator, if the parties fail to agree on the arbitrator within thirty days of receipt of a request by one party from the other party to so agree, the appointment shall be made, upon request of a party, by the High Court or any person or institution designated by such Court. As this Court is given the provision to deal with applications under Section 11 of the Act of 1996 by the Hon'ble The Chief Justice, High Court of Telangana, it would be within its power to undertake the exercise contemplated by Section 11(5) & (6) of the Act of 1996. As per Section 11(6A) of the Act of 1996, which was inserted therein by Act 3 of 2016 with effect from 23.10.2015, the High Court, while considering an application under Section 11(5) & (6) of the Act of 1996 shall confine itself to examination of the existence of an arbitration agreement and no more.

As the arbitration clause contemplates resolution of the disputes by a sole Arbitrator, the Arbitration Application is ordered appointing Sri Justice G.Yethirajulu, Retired Judge, erstwhile High Court of Andhra Pradesh, residing at Flat No.501, Pruthvi Block, My Home Navadweepa Apartments, Hi-Tech City, Madhapur, Hyderabad-500081, as the sole Arbitrator for resolution of the disputes between the applicant company and the respondent company, arising out of the distribution agreement dated 01.04.2017, in accordance with the provisions and mandate of the Act of 1996. The learned Arbitrator shall be entitled to fees as per the

rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23.10.2015, which shall be borne by both parties in equal measure. No order as to costs.

SANJAY KUMAR, J

27th FEBRUARY, 2019

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