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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 55/2019

BIBA APPARELS PRIVATE LIMITED

..... Petitioner

Through: Ms.Aditi Sharma & Mr.Atul Guleria,
Advts.

versus

MNM MARKETING PRIVATE LIMITED

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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28.02.2019

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Franchise Agreement dated 17.09.2008 executed between the parties. The Arbitration Agreement is contained in Clause 18 thereof which is reproduced hereinbelow:-

"18. DISPUTES RESOLUTION & ARBITRATION

- (a) *If any dispute or difference of any kind whatsoever arises between the Parties in connection with the Agreement including any question regarding its existence, validity or termination, the Parties shall seek to resolve any such dispute or difference by mutual consultation.*
- (b) *If the Parties fail to resolve such dispute or difference by mutual consultation then the dispute or difference shall be referred for arbitration to be conducted in accordance with the Indian*

Arbitration and Conciliation Act, 1996. The venue of the Arbitration shall be New Delhi and the language of Arbitration proceedings shall be English. The award of the arbitrator(s) shall be final and binding on the Parties.”

2. Disputes having arisen between the parties, the petitioner filed a Civil Suit, being CS No. 7286/2016, before the Court of the District Judge, District South, Saket Court, New Delhi. In the said suit, the respondent filed an application under Section 8 of the Act placing reliance on the Arbitration Agreement between the parties. The said application was allowed by the Additional District Judge referring the parties to arbitration vide his order dated 16.10.2017.
3. The petitioner thereafter formally invoked the Arbitration Agreement by notice dated 26.03.2018. The said notice could not be served on the respondent and therefore, the petitioner on 19.04.2018 served a copy of the same to the respondent by way of an e-mail at the e-mail address given for the company in the Company Master Data maintained by the Ministry of Corporate Affairs. Having received no response to the notice, the present petition was filed.
4. Notice issued by this Court has also been served on the respondent at the e-mail address given in the Company Master Data maintained by the Ministry of Corporate Affairs. In spite of such service, none appears for the respondent.
5. As the Arbitration Agreement and due invocation thereof remain unchallenged and infact, it was the respondent itself who had relied upon the Arbitration Agreement in the Civil Suit filed by the petitioner, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that

have arisen between the parties in relation to the abovementioned Franchise Agreement.

6. I appoint **Mr.Vinay Singh Bist**, Advocate (R/o C-10, Basement, Nizamuddin West, New Delhi-110013, Mobile: 09711670192) as a Sole Arbitrator for adjudicating such disputes that have arisen between the parties.

7. The Arbitrator shall give a disclosure under Section 12 of the Act before proceeding with the reference.

8. The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

FEBRUARY 28, 2019/rv