

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.55 of 2014

ORDER :

This Arbitration Application under Section 11 (5) of the Arbitration and Conciliation Act, 1996 (for brevity "the Act") is filed by the applicant seeking appointment of an Arbitrator for resolution of the disputes between the applicant and the respondent arising out of the Franchise Agreement dated 19-04-2011.

The case of the applicant is that the applicant carries on business in the field of education and training related activities including imparting coaching for CAT and other entrance tests. The applicant entered into a Franchise Agreement dated 19-04-2011 with the respondent, under which the respondent had agreed to operate as a franchisee of the applicant at Kolkata. But during the course of execution of the said agreement, disputes arose between the parties. As such, the petitioner issued notice dated 12-09-2013 claiming Rs.5,10,29,866/- as well as invoking the arbitration clause of the Franchise Agreement. The respondent replied by issuing reply notice dated 21-10-2013 disputing the claims of the applicant and also disputing the existence of arbitration clause. As such, the present arbitration application is filed.

Learned counsel for the applicant submits that though the Franchise Agreement dated 19-04-2011 clearly provides

for arbitration clause, the respondents have simply denied the existence of arbitration clause in the reply notice, which is without any basis.

Learned counsel for the respondent seeks time for filing counter. But the same is also opposed by counsel for the applicant. Since the matter is of the year 2014, this Court is not inclined to grant further time for filing counter.

The Franchise Agreement, dated 19-04-2011 provides for arbitration clause, which reads as under:

“ All disputes and differences of whatsoever arising out of or concerning this agreement, whether during its term or after expiry thereof or prior termination shall be referred to two arbitrators one of whom is nominated by the FRANCHISE and the other nominated by the director of T.I.M.E and the decision of the said arbitrators shall be final and binding on all the parties of this agreement. And the provisions of Indian Arbitration Act, 1942 shall apply to the matters not provided herein.

This agreement is executed at Secunderabad and only the court at Secunderabad shall have jurisdiction to entertain any suit between the two parties under the agreement.”

The applicant has also invoked the arbitration clause as provided in the Franchise Agreement by issuing legal notice dated 12-09-2013 and while disputing the claim of the petitioner, the respondents have denied the existence of the same vide reply notice dated 21-10-2013, which is without any basis, as the Franchise Agreement clearly provides for arbitration clause stated supra.

Though Franchise Agreement, dated 19-04-2011 provides for nomination of independent arbitrator by respective parties, inasmuch as there is no consensus no arbitrator could be nominated by them.

Section 10 of Arbitration and Conciliation Act, 1996 reads as under:

Section 10: Number of Arbitrators-

- (1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.
- (2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.

In view of sub-Section (2) of Section 10 of Arbitration and Conciliation Act, 1996, sole arbitrator is required to be appointed in the present Arbitration Application.

Accordingly, the arbitration application is allowed appointing Hon'ble Sri Justice P.Venkatarama Reddi, Former Judge of Supreme Court of India as the sole Arbitrator for resolution of dispute(s) between the applicant and respondent, arising out of franchise agreement 19-04-2011 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.

As a sequel, miscellaneous applications pending, if any,
shall stand closed.

A. RAJASHEKER REDDY, J

06-01-2020

Note:

Copy to:

Hon'ble Sri Justice P.Venkatarama Reddi,
Former Judge, Supreme Court of India
B-12, Stone Valley Apts,
Road No.4, Banjara Hills,
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B/o.

Nvl



HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.84 of 2019



02-01-2020

Nvl