

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.54 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 arose out of the franchise agreement dated 02-02-2008.

The case of the applicant is that the applicant entered into a franchise agreement dated 02-02-2008 with respondent No.2 through respondent No.3 and during the course of execution of said agreement, disputes arose between the parties. As such, the petitioner issued notice dated 12-09-2013 claiming Rs.1,48,88,846.91 paise as well as invoking the arbitration clause. The respondents replied by issuing reply notice dated 09-11-2013 disputing the claims and also disputing the existence of arbitration clause. As such, the present arbitration application is filed.

Learned counsel for the applicant submits that franchise agreement dated 02-02-2008 provides for arbitration clause and inspite of the same, the respondents have simply denied the existence of arbitration clause in the reply, which is without any basis.

Though notice is served, none appears for the respondents and no counter affidavit is filed.

The franchise agreement, dated 02-02-2008 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 above arbitration clause by issuing legal notice dated 12-09-2013 and while disputing the claim of the petitioner, the respondents have denied existence of the same vide reply notice dated 09-11-2013, which is without any basis, as the franchise agreement clearly provides for arbitration clause stated supra.

Though Franchise Agreement, dated 02-02-2008 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 can be appointed in the present Arbitration Application.

In view of the above, the arbitration application is allowed appointing Hon'ble Dr. Justice G. Yathirajulu, former High Court Judge, as the sole Arbitrator for resolution of dispute(s) between the applicant and respondent, arising out of franchise agreement 02-02-2008 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
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B/o.
Nvl



HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION No.84 of 2019



02-01-2020

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