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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 09.11.2021

+ **ARB.P. 930/2021**

M/S. ARKAS BIOCON PRIVATE LIMITED Petitioner

Through: Mr. Paritosh Budhiraja, Ms. Surabhi
Maheshwari & Ms. Divya Singh,
Advocates

Versus

M/S. KASHINATH AGRO INDUSTRIES PRIVATE LIMITED

..... Respondent

Through: Mr. Utkarsh Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. For adjudication of disputes with respondent, petitioner has filed the present petition under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator.

2. Petitioner is a Company incorporated under the Companies Act, 1956, who had entered into a Lease Agreement dated 09.05.2018 with respondent, a private limited company, whereby Plot bearing Khasra No.292, Khata Khatuni No. 00037, Village Itara, Tehsil & District Meerut, Uttar Pradesh, along with manufacturing shed, including plant, machinery and equipment,

constructed thereon, was leased to the petitioner for eleven months on a monthly rental of Rs.4,50,000/- with applicable GST.

3. According to petitioner, the said plant was taken on lease from the respondent for the purpose of manufacture of Liquid Glucose, Malto Dextrin Powder and the byproduct being cattle feed, which were to be manufactured by the petitioner from broken rice by enzymatic process. Further claimed that, in terms of the Lease Agreement dated 09.05.2018 petitioner had furnished security deposit of Rs.27,00,000/- to the respondent. However, certain disputed with regard to equipments, electricity and pollution approvals from concerned authorities, electricity and water connection etc. arose between the parties and the claim of petitioner is that despite assurances, respondent failed to fix the disputes, due to which petitioner had to suffer for running the manufacturing unit at the site. Further claim of petitioner is that the plant became fully operational only on 22.09.2018 and as per the agreement, petitioner is liable to pay the lease rent only from the date when the production from the plant shall become fully operational i.e. 22.09.2018 only.

4. According to petitioner, the delay in refurbishment/repairs/ replacement of the equipment was solely attributable to petitioner and since

respondent failed to complete the refurbishment /repairs/ replacement of the plant within 45 days of the execution of the lease agreement, respondent has no right to demand any amount, in part or in full, from the sale proceeds of the products so manufactured and sold by the petitioner and the sole consideration payable by the petitioner to the respondent was the agreed monthly lease rental.

5. It is also averred on behalf of petitioner that upon completion of eleven months from the date of the commencement of the agreement, the lease agreement in question stood terminated and petitioner vide email dated April 19th, 2019 had informed the respondent that petitioner shall vacate the leased premises on April 21st, 2019. Thereafter, several communications were exchanged between the parties and despite repeated requests of petitioner, security deposit, after adjustment of two months rental, has not been refunded to the petitioner. Besides security deposit, petitioner has also claimed refund towards electricity deposit with interest thereon and certain other claims.

6. The claim of petitioner is that when respondent failed to make the payments raised by the petitioner, a legal notice dated 03.03.2021 was issued to the respondent calling upon to make the payment of ARB.P.930/2021

Rs.1,97,77,000/- and notified that if respondent fails to make the payment within 14 days of receipt of notice, the same shall be presumed to be refusal on the part of respondent and in that eventuality Arbitration Clause as contained in Article 17 of the Lease Agreement shall stand invoked. Petitioner said to have even proposed names of three Arbitrators for adjudication of disputes. However, since petitioner did not receive any communication from respondent in response to its legal notice dated 03.03.2021, it has approached this Court seeking appointment of Arbitrator.

7. At the hearing, though the claims so raised by the petitioner are opposed by learned counsel appearing on behalf of respondent, however, existence of Lease Agreement dated 09.05.2018 is not disputed. It is also not disputed that in terms of Article 17 of the Lease Agreement disputes have to be adjudicated through arbitration. However, learned counsel for respondent has submitted that this Court may appoint Arbitrator instead of any names so proposed by the petitioner.

8. In view of the above, keeping in mind that disputes *inter se* parties have to be resolved in terms of Article 17 of the Lease Agreement dated 09.05.2018, which is not disputed, this petition is allowed.

9. Accordingly, **Mr. Justice (Retd.) Sangeet Lodha (Mobile:**

9414130220) is appointed Sole Arbitrator to adjudicate the dispute between the parties.

10. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

11. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

12. The petition is accordingly disposed of.

13. A copy of this order be sent to the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 09, 2021

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