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

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Date of decision: 15.12.2021

+ ARB.P. 1084/2021

SIDHARTH SAWHNEY

..... Petitioner

Through Mr.Akshay Bhatia & Mr.Ravi
Sharma, Advs.

versus

M/S FRENCH BAKERY PVT LTD AND ORS Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 read with Section 2 of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court, 2015 seeking appointment of sole Arbitrator to adjudicate the disputes with respondents.

2. Respondent no.1 is a private limited company and engaged in the business of patisseries/bakery retail operations. Respondent no.2 is the Managing Director of the company and respondent no.3 is the Chairman and also one of the Director of the company, however, none has appeared on

behalf of the respondents.

3. As per office report from Registry, service report qua notice to respondents through courier, speed post, email, fax and Whatsapp is awaited. Further, as per the office report from the Registry, notice sent to respondent no.1 through the ordinary post is served.

4. As per the affidavit of service filed by petitioner, service upon respondents have been affected through speed post and courier as the same is evident from the documents annexed with the affidavit of service filed by learned counsel for the petitioner. Considering the aforesaid facts, it can be said that respondents are deemed to be served, but despite that respondents have preferred not to appear before this Court. It seems that respondents have nothing to oppose in the present petition.

5. As per the averments made by petitioner, petitioner is the sole and absolute owner of the property bearing no.SG-22, Galleria Shopping Mall, Phase-IV, DLF Qutab Enclave Complex, DLF City, Gurgaon admeasuring 961 sq. ft.

6. According to the petitioner, respondents approached him for taking a portion admeasuring 602 sq. ft (super area) and 421 sq. ft. (covered area) of the above-mentioned property on lease. They further requested the

petitioner to let out the aforementioned portion on the monthly rental basis as they wanted to carry out their business of patisseries/bakery retail operations from the said portion. Upon the aforesaid proposal, a lease deed was executed between the parties on 20.04.2018 and petitioner let out the aforementioned portion of the premises to the respondents for a period of 6 years commencing from 01.02.2018 to 31.01.2024 out of which first 3 years shall be the lock-in-period from 01.02.2018 to 01.02.2021. Since then the respondents are in peaceful occupation and possession of the aforementioned premises.

7. Thereafter, the respondents started defaulting in making the payment of rent and other applicable charges, TDS and GST when the cheque for a sum of Rs.5,93,376/- bearing cheque no.726886 dated 04.03.2020 drawn on Yes Bank issued by the respondents to the petitioner got dishonoured and returned unpaid vide bank memo dated 05.03.2020 with remarks "Funds Insufficient". Petitioner immediately through his employee sent an email to one Mr.Raman Oberoi, authorised representative of respondents informing about the dishonour of the abovementioned cheque and requested to make payment through RTGS. However, Mr.Oberoi neither replied nor complied with the above request. Petitioner again through his employee sent email to

Mr.Oberoi demanding aforementioned due payment but of no avail. As Mr.Oberoi was not responding, petitioner sent email to Mr.Oberoi asking about the issue and in response to that, Mr.Oberoi sent reply by email stating that “Our main bank is with Yes Bank and our major funds get stuck with Yes Bank, I believe the things will resolve within couple of days, till then bear with us.”

8. It is submitted that on 20.03.2020, respondents made part payment of Rs.3,00,000/- to the petitioner and promised that balance payment of Rs.2,93,376/- shall be made as soon as possible. On 24.03.2020, respondent no.1 along with Chairman and Director (respondent no.3) requested for waive off rent and other charges from 22.03.2020 due to lockdown, however, petitioner refused the same. Against the payment of rent and other charges, petitioner presented the cheque in the month of May, 2020 which got dishonoured with the remarks “Funds Insufficient”.

9. Thereafter, petitioner sent a legal notice on 20.05.2020 under Negotiable Instrument Act and demanded the arrears of the rent; sent various legal notices and also filed criminal complaints too. Accordingly, petitioner invoked arbitration clause and sent an invocation notice to the respondents and in the said notice, petitioner appointed its sole arbitrator.

However, in response thereto, respondents appointed two Arbitrators of their choice. Being dissatisfied with appointment, the present petition has been filed.

10. In view of the fact as narrated above, this Court deems it appropriate to appoint its Arbitrator to adjudicate the disputed between the parties. Accordingly, the present petition is allowed and **Mr. Amar Nath, DHJS (Retd.) (Mobile: 9958697030)** is appointed sole Arbitrator to adjudicate the dispute between the parties.

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

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

13. The present petition stands disposed of.

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

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 15, 2021
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