

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ARBITRATION APPLICATION NO.126 OF 2021**

Manoj Kumar Kalyandas Daswani & Ors. ] .. Applicants

vs.

WIB Hospitality Private Limited ] .. Respondent

Ms.Christabelle M.K. for the Applilcants.

**CORAM : BHARATI DANGRE, J**

**DATE : 08<sup>th</sup> DECEMBER, 2022.**

**P.C.**

1] In furtherance of order dated 21.11.2022 , the learned counsel for the Applicants has placed on record Affidavit of Service.

2] A specific statement is made in the said Affidavit in Para 3 to 5, which reads as under :

“3. I say that pursuant to the aforesaid order, I have affected the service of the aforesaid order through notice by “Registered Post” on 24th November, 2022. Hereto annexed and marked as “EXHIBIT A” is notice dated 24<sup>th</sup> November, 2022 alongwith the tracking report of the consignment confirming the delivery of the said notice on 29<sup>th</sup> November, 2022.

4. I say that apart from the registered post service, I have also sent the notice through its registered email address that is available on the MCA website of the Respondent. Hereto annexed and marked is EXHIBIT B is the copy of email dated 5<sup>th</sup> December, 2022 addressed to the Respondent through its registered addressed i.e.

[legitsolution@gmail.com](mailto:legitsolution@gmail.com).

5. Accordingly, I say that the Respondent have been intimated about the above mentioned arbitration application that is to be listed on 8<sup>th</sup> December, 2022. Vide email dated 5<sup>th</sup> December, 2022.”

3] Since the Respondent has failed to mark appearance despite service being effected, I deem it appropriate to consider the Application which seek appointment of the Sole Arbitrator to resolve the disputes that have arisen between the parties out of the “Franchisee Agreement” dated 21.10.2019.

4] The Franchisee Agreement dated 21.10.2019 was entered between the Applicants and the Respondent and it set out the terms and conditions agreed between the Master Franchisee and the Respondents, and the Agreement clearly stipulate the scope of the business to be carried out between the two parties alongwith association fees as well as obligations to be discharged by the parties on their part.

5] In case of dispute arising out of, or in relation to or in connection with the agreement between the parties, or relating to the performance or non-performance of the rights and obligations set forth therein or the breach, termination, invalidity or interpretation thereof, shall be referred to for arbitration in accordance with the Arbitration Act or any amendments thereof. The place of arbitration was described as Mumbai.

6] Since certain disputes arise between the parties, arbitration clause was invoked by communicated dated 05.04.2021 addressed to the Respondents, clearly setting out their claim against and reference

was made to the arbitration clause contained in the Agreement. The name of Sole Arbitrator to be appointed was also suggested in the said communication.

7] The said notice was responded to by the Respondents and name of Arbitrator came from their side, but ultimately since no consensus could be arrived between the parties about the name of the Sole Arbitrator to be appointed under the relevant clause contained in the Franchisee Agreement, the Applicant has approached this court by invoking sub-section (6) of Section 11 of the Arbitration Act.

8] I have heard the learned counsel for the Applicant in absence of the Respondents who have chosen not to be represented despite service being effected.

On perusal of the Agreement, since I hold that clause XIV/4 in the Franchisee Agreement is the existing arbitration clause, I deem it appropriate to pass the following order :

### **ORDER**

#### **TERMS OF APPOINTMENT**

##### **(a) Appointment of Arbitrator :**

Advocate Dormaan Dalal, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

##### **(b) Communication to Arbitrator of this order :-**

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

**(c) Disclosure :** The learned Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application, with a copy to be forwarded to both the parties.

**(d) Appearance before the Arbitrator :** The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from /12/2022. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

**(e) Contact and communication information of the parties :** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

**(f) Section 16 application :** The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

**(g) Fees :** The Sole Arbitrator shall be entitled for the fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 and the arbitral costs and fees of the Arbitrator shall be

borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

**(h) Venue and seat of Arbitration** : Parties agree that the venue and seat of the arbitration will be in Mumbai.

**(i) Procedure** : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

Application Is disposed off in the aforesaid terms.

**[BHARATI DANGRE, J]**