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Arb.O.P (Comm.Div.) No.65 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

Arb.O.P (Comm.Div.) No.65 of 2022

and

A.No.1418 of 2022

1. M/s.Rinijosh Enterprises,
Partnership Firm,
Represented by D.Samuel Joshua,
(Managing Partner)
No.1/1, LIC Quarters,
Appatro Salai, Velankanni School,
KK Nagar, Chennai-600 078.
2. D.Samuel Joshua
3. Mrs.Rini Steff

... Petitioners

- Vs -

M/s.Gharwaala Tiffin Pvt Ltd.,
Rep. by its Director Mr.Nikhil Kaushik,
Plot No.199, Behind Punjab National Bank,
Village High Road, Sholinganallur,
Chennai-600 119.

...Respondent

Arbitration Original Petition filed under Section 14(2) read with Section 11 of the Arbitration and Conciliation Act, 1996 to (a) terminate the mandate of the learned Sole Arbitrator Mr.S.N.Ravichandran in his arbitration file No.1/2020 (b) Appoint an independent sole Arbitrator to adjudicate the dispute between the petitioner and the respondent in terms of the Franchise agreement dated 01.05.2018 and (c) direct the respondent to pay costs.



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For Petitioners : Mr.G.Vigneshwar

For Respondent : Ms.Preethi S.Arasu

ORDER

This common order will dispose of the captioned Arb. OP and application thereat.

2. This order will have to be read in conjunction with and in continuation of proceedings made by this Court in the first listing of captioned Arb OP on 18.02.2022, which reads as follows:

'The captioned Arb. OP has been presented in this Court on 02.02.2022 inter alia under Section 14 (2) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, with a prayer for termination of mandate of a sole Arbitrator and for substitution of the sole Arbitrator.

2. Mr.G.Vigneshwar, learned counsel for the petitioners, who is before this Court, submits that short facts are as follows:

(i) The entire matter is traceable to a Franchise Agreement dated 01.05.2018 (hereinafter 'said Franchise Agreement' for the sake of convenience and clarity). In the said Franchise Agreement, the first petitioner firm and the sole respondent company are parties;

(ii) To be noted, this Court is informed that Petitioners 2 and 3 are partners in the first petitioner firm in the said Franchise Agreement. In the said Franchise Agreement, sole respondent is the



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Franchisor and the first petitioner partnership firm is the Franchisee;

(iii) This Court is informed that said Franchise Agreement pertains to preparation and selling of food items but it is not necessary to dilate further on this aspect of the matter at this stage. Article XXX of said Franchise Agreement is the arbitration clause and the same reads as follows:

'ARTICLE XXX

APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- 1. This Agreement and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with Indian substantive and procedural law, applicable to Agreements made and to be performed entirely therein.*
- 2. The parties shall attempt in good faith to resolve any dispute, difference or claim arising out of or in relation to this Agreement through mutual discussion. In case it is not resolved within thirty (30) days from receipt of the written notice (setting out the dispute or claim) by the other party, the complaining party may issue a notice reference, invoking settlement of such dispute through Arbitration.*
- 3. All disputes between parties shall be subject to exclusive jurisdiction of Chennai only.*
- 4. Any and all disputes ("Disputes") arising out of or in relation to or in connection with this Agreement between the parties or relating to the performance or non-performance of the rights and obligations set forth herein or the breach, termination, invalidity or interpretation thereof shall be referred for arbitration at Madras High Court, in accordance with the terms of Indian Arbitration and Conciliation Act, 1996 or any amendments thereof. The language used in the arbitral proceedings*



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shall be English. Arbitration shall be conducted by a sole arbitrator, who shall be appointed by the Franchisor only. The sole arbitrator shall be appointed as per the provisions of Arbitration and Conciliation Act, 1996. The arbitral award shall be in writing and shall be final and binding on each party and shall be enforceable in any Court of competent jurisdiction.'

(iv) Franchisor triggered the aforementioned arbitration clause and unilaterally appointed a member of the Bar as sole Arbitrator is learned counsel's further say;

(v) The Franchisee (petitioners before me) moved an application before sole Arbitrator inter alia pointing out that appointment itself is bad and therefore constitution of Arbitral Tribunal itself is bad;

(vi) Learned counsel very fairly submits that aforementioned application was moved erroneously under Section 11 of A and C Act but sole Arbitrator has also entertained the application under Section 11 and made an order dated 17.11.2021 dismissing the prayer inter-alia describing the application as an ill-thought interlocutory application;

(vii) The Franchisee firm and the two partners assailed the aforementioned 17.11.2021 order of the sole Arbitrator before this Court under Article 227 of the Constitution of India vide C.R.P (SR) No. 105133 of 2021 and a Hon'ble single Judge of this Court disposed of the C.R.P at SR stage in and by an order dated 17.12.2021 leaving all the issues raised by the petitioners;

(viii) Learned counsel submits that as the issues raised by the petitioners have been left open, it is now open to the petitioners to come up with the captioned Arb.OP;



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(ix) *Learned counsel submits that notwithstanding the aforementioned trajectory, the sole Arbitrator is proceeding with the arbitration at a hectic pace and the matter is listed tomorrow (19.02.2022, Saturday) for cross-examination of one of the witnesses:*

3. *This Court has carefully perused the case file and the submission made by learned counsel for petitioners. This Court finds that the petitioners have made out a prima facie case as they are assailing the very appointment/nomination inter alia on the ground that the same has been made without notice and unilaterally. If the sole Arbitrator proceeds with the arbitration, no elucidation is required to say that it can lead to an irreversible situation.*

4. *Issue notice to the sole respondent returnable by 10.03.2022. Private notice permitted. Private notice through electronic modes of communications (subject to proof being demonstrated) also permitted.*

5. *If the sole Arbitrator proceeds with the arbitration, it can lead to an irreversible situation. Therefore, there shall be an order of interim stay of all further proceedings before the sole Arbitrator, namely Mr.S.N.Ravichandran, having address at No.308/179, Navin House, 2nd Floor, Thambu Chetty Street, Chennai – 600 001, E-mail: snrlawfirm@gmail.com (Ph: 044-25260745, Mob: 9444060745). It is open to the petitioners to file a memo before the learned sole Arbitrator tomorrow (19.02.2022) or whenever the next sitting is, bringing to the notice of the learned sole Arbitrator these proceedings and the interim order that has been made by this Court.*

6. *Be that as it may, Registry is directed to communicate this order forthwith to the sole arbitrator Mr.S.N.Ravichandran, having address at No.308/179, Navin House, 2nd Floor, Thambu Chetty Street,*



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Chennai – 600 001, E-mail: snrlawfirm@gmail.com (Ph: 044-25260745, Mob: 9444060745).

List on 10.03.2022.'

3. Short forms, abbreviations and short references used in the aforementioned 18.02.2022 proceedings shall continue to be used in the instant proceedings also for the sake of convenience and clarity.

4. Ms.Preethi S.Arasu, learned counsel who has entered appearance on behalf of the lone respondent [claimant in the arbitration proceedings] submits that the three petitioners in captioned Arb OP i.e., respondents in the arbitration proceedings have been biding time and procrastinating the matter. This is disputed by the learned counsel for petitioners before me. To put an end to this controversy and also ensure that arbitration proceedings are conducted expeditiously so that the *lis* i.e., arbitrable disputes are adjudicated upon [rather than spending time on these peripheral issues], this Court deems it appropriate to appoint a former judge of the District Judiciary in the State of Tamil Nadu as sole Arbitrator in place of the Arbitrator who has been nominated by the respondent in the captioned Arb OP. This course is adopted for three reasons in all. One reason is, as already been alluded to supra, it is necessary that the arbitrable disputes are adjudicated upon expeditiously, the second reason is, there is no dispute or contestation about the existence of arbitration



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agreement between the parties i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act and the third reason is, one of the grounds of attack is unilateral appointment of Arbitrator by the respondent and to put it in legal language alleged breach of *Perkins* principle being ratio qua *Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd.*, reported in *2019 SCC Online SC 1517*.

5. As regards the choice of Hon'ble Arbitrator both sides consented to the same and therefore, this douses all questions regarding appointment of Arbitrator. It is made clear that the replacement of the existing Arbitrator who is a Member of the Bar with a former Judge in District Judiciary, State of Tamil Nadu is only as a matter of good order and it shall not be put against the learned Arbitrator in any proceedings in any manner against the learned Arbitrator who is being replaced. For further clarity, it is stated with specificity that this order is no reflection on the Arbitrator who is being replaced or the proceedings he has conducted thus far.

6. The following simple order is made:

- a) Mr.J.Krishnamoorthy (Retd. District Judge), with address for service at B-2/D, Nutechkrishna, New D.No.37 (Old D.No.15), Soundararajan Street, T.Nagar, Chennai-600 017



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(Mob:94420 92363, Ph:044-2434 2363) (email:

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jkrishnamoorthy88@yahoo.com) is appointed as sole Arbitrator;

b) Learned sole Arbitrator who has been appointed by this order shall enter upon reference, adjudicate the arbitral disputes that have arisen between the parties qua said Franchise Agreement i.e., Franchise Agreement dated 01.05.2018;

c) Learned sole Arbitrator shall conduct proceedings by holding sittings in 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC) in accordance with Madras High Court Arbitration Proceedings Rules 2017 and fee of the learned Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

d) Sole respondent in the captioned Arb OP shall replicate the claim statement already filed before the former Arbitrator and file the same claim statement along with supporting documents before the Arbitrator who has now been appointed. Thereafter, aforementioned procedure will follow;



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e) Though obvious it is made clear that all questions are left open and this Court has not expressed any view or opinion on the merits of the matter i.e., *lis* (arbitrable disputes).

7. Captioned Arb.OP disposed of in the aforesaid manner. Consequently, A.No.1418 of 2022 is disposed of as closed. There shall be no order as to costs.

25.04.2022

Speaking order: Yes/No

Index: Yes/No

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Note: The Registry is directed to communicate this order forthwith to To

1. Mr.J.Krishnamoorthy (Retd. District Judge),
B-2/D, Nutechkrishna, New D.No.37 (Old D.No.15),
Soundararajan Street, T.Nagar, Chennai-600 017.
(Mob: 94420 92363, Ph:044-2434 2363).

2. The Director,
Tamil Nadu Mediation and Conciliation Centre
-cum- Ex-Officio Member,
Madras High Court Arbitration Centre,
Chennai - 104.



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M.SUNDAR.J.,

kmi

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