



Arb. O.P(Com.Div). No.499 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

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P.Vijayanand

... Petitioner

Vs.

1.Attapetta Global Private Limited,
Represented by its Director

a. Also having place of business at:
Plot No.302, Mahatma Gandhi Street,
OFF OMR, Thoraipakkam, Chennai – 600 097.

b.No.13, Second Floor,
Customs Colony Main Road,
Okkiam, Thoraipakkam, Chennai – 600 097.

2.Sivalingam Sadhappan,
Director of Attapetta Global Private Limited,
Jain Housing Broke, Block 7,
Door No.T F,
Madha Kovil Street, Okkiam Pettai,
Okkiam, Thoraipakkam, Chennai – 600 097.

3.Varunan Premchand Bharathi,
Director of Attapetta Global Private Limited,
2G, Primrose, Ceebros Gardens,
Vembulliamman Koil Street,
Arcot Road, Virugambakkam,
Chennai – 600 092.



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4.Karthik Srinivasan Pobathy,
Director of Attapetta Global Private Limited,
No.6, First Main Road,
Surya Nagar, Medavakkam,
Chennai – 600 100.

... Respondents

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a sole arbitrator to adjudicate the disputes between the petitioner and the respondents arisen out of Franchise Agreement dated 20.10.2019.

For Petitioner : Ms.C.Harini

For Respondents : Mr.S.Karpagapriya
for Mr.T.Gowthaman

ORDER

This petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1956, seeking to appoint an Arbitrator for adjudication of dispute between the petitioner and respondent arising out of Franchise Agreement dated 20.10.2019.

2.Learned counsel appearing for the petitioner would submit that the petitioner invested a sum of Rs.1,27,00,000/- (Rupees One Crore Twenty Seven



Lakhs Only) in the 1st respondent Company in terms of the Franchise Agreement dated 20.10.2019.

3.Learned counsel appearing for the petitioner would further submit in terms of Article V(2) of the Franchise Agreement, the respondent agreed to pay the petitioner a monthly revenue share of 15% of the revenue generated from the sale of the products or a minimum guarantee amount of Rs.3,81,000/- (Rupees Three Lakh Eighty Thousand Only) per month, whichever is higher. Therefore, he contended that even the revenue share is lower, the 1st respondent is liable to a minimum guarantee payment of sum of Rs.3,81,000/- per month to the petitioner.

4.He would submit that the 1st respondent has not made any payment after February 2020. Even in the month of December 2019, January and February 2020, the 1st respondent Company made only part payment. Therefore, the petitioner sent a legal notice dated 10.05.2021 calling upon the respondents to make the payment. The relevant portion is reproduced hereunder:

“13.The disputes being referred to arbitration under this notice are as follows:



a) Payment of Rs.51,24,000/- towards overdue MG payments for the period between March 2020 till 10th May 2021 and MG payments which are to be paid with every succeeding month until end of term of the Franchise Agreement;

b) Interest of Rs.9,58,230/- calculated at the rate of 36% p.a till date of payment, on Rs.51,24,000/- from March 2020 till 10.05.2021, plus the minimum guarantee and interest payments payable until date of award;

c) Payment of Rs.1,29,612 wrongly deducted and withheld as penalty by the Company during the months of December and January 2020 and interest of Rs.58,325/- calculated @ 36% p.a (till 10.05.2021) plus interest until date of award;

d) Payment of Rs.38,100 wrongly deducted & withheld towards TDS for the month of February 2020, plus an interest of Rs.16,002/- calculated @ 36%p.a (till 10.05.2021) plus interest until date of award;

e) Including but without being restricted to claiming all damages for the loss suffered as a result of the breach; indemnification of the losses caused due to the breach of obligations.”



5.The petitioner has expressed in the legal notice that, in the event of failure to make the payment, they would invoke Article XXIII(2) of the Franchise Agreement to adjudicate the dispute through Arbitrator. Hence, the present petitioner has been filed seeking to appoint an Arbitrator.

6.On the other hand, though the learned counsel appearing for the respondent vehemently opposed for allowing the present petitioner stating that due to the force majeure, they were not in a position to make the payment from March 2020, which is Covid -19 pandemic situation and she has also filed counter statement in this regard and fairly submitted that the Court may appoint any person as sole arbitrator to arbitrate the present dispute.

7.Heard the learned counsel appearing for the petitioner as well as the respondents and perused the material available on records.

8.For better appreciation, Article XXIII of the Franchise Agreement is reproduced hereunder:

“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 of reference, invoking settlement of such dispute through arbitration.”

9.In view of the above submissions and a perusal of Article XXIII(2) of the Franchise Agreement, it is clear that the present dispute falls within the purview of the said Franchise Agreement and accordingly, the present dispute is arbitable in terms of the said agreement and in view of the consent given by either side counsel for appointing arbitrator, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondents.

10.Accordingly, the Hon'ble Mr.Justice M.Vijayaraghavan (Retd), residing at Door No.2/15, Dr.T.V.Naidu Road, Flat No.2B, Abirami Foliage, Chetpet, Chennai, (Phone No.9003268968), is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order. The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.



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11. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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KRISHNAN RAMASAMY. J.,



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