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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

ARB No. 68 of 2018 (O&M)
Date of Decision: 22.12.2022

M/s Trend Setters

-Petitioner

Versus

M/s LPT Retail Pvt. Ltd. and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Karan Singh Gill, Advocate,
for the petitioner.

None for the respondents.

RAJ MOHAN SINGH, J. (Oral)

1. The petitioner has preferred this petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an independent arbitrator in order to adjudicate the dispute between the parties arising out of Buyer Seller Agreement dated 28.11.2016.

2. Vide the aforesaid agreement, the petitioner was given franchisee right to sell goods on behalf of the respondent No.1 on return basis. As per terms and conditions of the agreement, the seller shall supply the goods to the buyer i.e. the petitioner on sale or return basis. If the goods are not sold, the seller undertakes to take back the goods within six months. The buyer shall exclusively stock the goods of the seller and subject to the availability, the seller shall supply to the buyer regularly

the said goods in quantities subject to meet the demands at the store of buyer. The buyer shall arrange an appropriate space i.e. 1000 sq. feet ground floor as built up area for the display and sale of the products of the Company at a specified place. The fixtures, Gondolas and hanging system shall be provided by the seller and the seller also agrees to provide the buyer the margins on sale of goods (Net of VAT). Monthly guarantee of Rs.65,000/- + 13% margins of NRV Sale or 28% on sale Value (Net of VAT) (whichever is higher, reconciliation on yearly basis). The buyer shall ensure that the sale proceeds are deposited in the seller's bank account on daily basis after adjustment of above said margins. The buyer shall at all times maintain accurate and fully updated record and inventory. The seller or its agent shall be entitled to check or verify the record at any reasonable time. The buyer shall also pay an amount of Rs.8 lacs as interest free refundable security against the stock at the premises. The seller shall refund the deposit of Rs.8 lacs to the buyer after expiry of the agreement, subject to settlement of all pending due accounts. The buyer has also issued two cheques in a total sum of Rs.25 lacs towards security.

3. Both the parties entered into commercial activities. There is a dispute redressal mechanism provided under para no.23 of the agreement. A dispute arose between the parties

and the petitioner has already issued a legal notice claiming an amount of Rs.13,38,951/- towards monthly guarantee upto October, 2017. An amount of Rs.25 lacs towards undated cheques was encashed by the respondents. In total, the petitioner has staked his claim to the tune of Rs.38,38,951/- for which the petitioner has already invoked the arbitration clause no.23 of the agreement.

4. Notice of motion was issued on 16.03.2018. The respondents could not be served by means of ordinary process of service. Thereafter notices through registered post were ordered to be issued on 23.08.2022 for 10.11.2022. The registered notices were received back unserved with the report that the respondents were not residing on the given address. Thereafter, vide order dated 10.11.2022, the respondents were directed to be served by means of substituted service under Order 5 Rule 20 read with Section 151 CPC.

5. The petitioner has placed on record relevant newspaper cutting showing that provisions under Order 5 Rule 20 read with Section 151 CPC have been complied with.

6. There is no representation on behalf of the respondents and therefore, they are proceeded against exparte.

7. The claim of the petitioner has gone un rebutted.

Existence of agreement having arbitration clause has not been denied.

8. In view of consensus arrived at between the parties, I deem it appropriate to appoint Mr. Gurtej Singh, Addl. Excise & Taxation Commissioner, # 3382, Sector 71, Mohali, Mobile No.9698700003 as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

9. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by the petitioner and respondent(s) in equal proportion.

10. The venue will be as per the convenience of the Arbitrator.

11. A copy of this order be dispatched to the Arbitrator at the following address:-

Mr. Gurtej Singh, Addl. Excise & Taxation Commissioner,
3382, Sector 71, Mohali,
Mobile No.9698700003

12. Petition stands disposed of accordingly.

22.12.2022

Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No