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

% ***Date of decision: 24.02.2022***

+ **ARB.P. 187/2022**

MR RAHUL SHARMA Petitioner

Through Mr. Mudit Sharma and Ms. Snigdha
Sharma, Advs.

versus

RATTAN INDIA ENTERPRISES LTD & ORS. Respondents

Through Mr. Manoj K. Singh, Mr. Nilava
Bandyopadhyay, Mr. Adhip Ray, Ms.
Sahiba Ahluwalia, Mr. Shashwat
Singh, Advs. for R-1
None for R-2
Mr. Parvez Alam Khan, Adv. for R3
to R8

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

1. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator to adjudicate the disputes inter-se the parties.

2. Learned counsel for petitioner submits that petitioner is promoter of respondent No.2 & respondent No.1 is a company incorporated under the Indian Companies Act, 1956. Shareholders' Agreement dated 28.04.2021 was entered into between petitioner and respondents & Share Subscription Agreement dated 28.04.2021 was entered into between petitioner and



respondent No.1 to 6.

3. Learned counsel for petitioner submits that upon execution of aforesaid Agreements, in terms of Clause 3.7 of Shareholders' Agreement dated 28.04.2021, the nominee of respondent No.1 was appointed as the Chief Financial Officer and another recommendation of the respondent No.1 was appointed as the Chief Executive Officer of respondent No.2. Further, in terms of Clause 3.2 of the said Agreement, the composition of the Board of Directors of the respondent No.2 has been and continues to be 2 Directors of the respondent No.1.

4. It is further submitted that pursuant to execution of aforesaid Agreements dated 28.04.2021, respondent No.1 has been acting in serious breach and violation of the Agreements resulting into immense financial and reputation loss to the petitioner and respondent No.2.

5. Learned counsel for petitioner has also submitted that respondent No.1 and its nominee Directors have not only breached their contractual obligations but have also breached their fiduciary duties towards the petitioner and the respondent No.2.

6. Further, respondent No.1 vide notice dated 26.11.2021 raised false allegations against petitioner for diversion of funds of respondent No.2.



Petitioner vide notice-cum-reply dated 13.12.2021, responded to false averments made in notice dated 26.11.2021 and the respondent No.1 was called upon to withdraw its notice dated 26.11.2021 and in the event of failure of withdrawal of said notice by respondent No.1, the said respondent was called upon to settle the dispute within 30 days from the receipt of notice-cum-reply dated 13.12.2021.

7. Subsequently, vide notice dated 06.01.2022, petitioner invoked arbitration and nominated Sole Arbitrator for adjudication of disputes between the parties. However, vide reply dated 04.02.2022, respondent No.1 refused to give consent to the appointment of Sole Arbitrator nominated by petitioner and instead nominated another Sole Arbitrator which was not consented by petitioner vide reply dated 09.02.2022. Hence, the present petition has been filed.

8. None has appeared on behalf of the respondent no. 2. As per office report from Registry, service report qua notice to respondent No.2 is awaited. However, as per the affidavit of service filed by the petitioner, respondent No.2 is served. Since none has appeared on behalf of the respondent No.2, it seems that the said respondent has nothing to oppose in the present petition.



9. Further during the course of hearing learned counsel on behalf of respondent No.1 as well as respondent Nos.3 to 8 respectively have appeared and submitted that the claims raised in the present petition are disputed, however, fairly conceded that the disputes inter se parties are arbitrable. Learned counsels also submitted that they have no objection if disputes are referred to an independent arbitrator appointed by this Court, subject to all issues remain open for consideration the learned Arbitrator.

10. Accordingly, **Mr. Justice (Retd.) Deepak Verma (Mobile: 9717393521)** is appointed as sole Arbitrator to adjudicate the dispute between the parties. Needless to say all issues shall remain open for parties to agitate and consideration by the learned Arbitrator.

11. The learned Arbitrator shall fix the fee after consultation with the parties.

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 accordingly.

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

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 24, 2022/rk