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

% ***Date of decision: 28.01.2022***

+ **ARB.P. 403/2021**

M/S KANODIA TECHNOPLAST LIMITED Petitioner

Through: Mr. Anand Shankar Jha, Shubham
Tripathi for Petitioner.

Versus

M/S A.P. TRADING COMPANY Respondent

Through: Mr. Anirudh Bakhru & Ms. Srishti
Khanna, Advocates

**CORAM
HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

JUDGMENT (oral)

1. The present petition has been filed by the petitioner under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator for adjudication of disputes with the respondent.
2. Petitioner-company, registered under the Companies Act, 1956, claims to be engaged in the business of making laminated pouches for mouth freshners, tobacco, pan masala and other food items. It claims to have come into business with respondent, a sole proprietorship firm, in April, 2017 for supply of paper.
3. According to petitioner, on 18.09.2019, respondent filed an application before the National Company Law Tribunal (NCLT) to initiate

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Corporate Insolvency Resolution Process against the petitioner and claimed an amount of Rs.8, 56,07,464/- in default. Upon being served with the notice of the said application, petitioner on 14.11.2019 filed its reply before the NCLT challenging the claims raised by the respondent herein. Further claimed by petitioner that during pendency of those proceedings, respondent approached the petitioner to amicably resolve the matter and parties entered into a Memorandum of Understanding dated 02.03.2020, wherein schedule for making the payments was agreed upon between the parties. Pursuant thereto, the respondent withdrew the application before NCLT on 03.03.2020.

4. However thereafter, according to petitioner, due to nationwide lock down in 23.03.2020 and covid pandemic, the petitioner was able to do business only a limited capacity and therefore, held meetings with respondent and prayed for 18 months moratorium period. It was agreed that in terms of Memorandum of Understanding dated 02.03.2020, petitioner shall make the payment of agreed amount in easy instalments of Rs.50 Lacs per month, however, respondent presented the cheques handed over by the petitioner to the respondent for encashment and initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881.

5. Thereafter, petitioner claims to have invoked vide Notice dated 21.01.2021 in terms of Clause-13 of the aforesaid Memorandum of Understanding dated 02.03.2021. However, since no reply thereto was received by the petitioner, therefore, the present petition is filed seeking appointment of an Arbitrator by this Court.

6. Mr.Anirudh Bakhru, Advocate, entered appearance on behalf of respondent and filed reply to the present petition. In the reply, respondent

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has disputed the averments made in the present petition as well as claims raised by the petitioner. During the hearing, it was submitted that the petitioners gave false representations that the entire outstanding amount shall be released, however, only a meagre amount was paid to the respondent.

7. Pertinently, existence of Memorandum of Understanding dated 02.03.2021 is not disputed. It is also not disputed that the disputes between the parties are arbitrable in terms of Clause-13 thereof and that petitioner has invoked arbitration vide notice dated 21.01.2021. Though the parties have disputed the claims raised by the other side, however, have jointly consented to appointment of Mr. Justice (Retd.) J.R.Midha as Arbitrator in this case.

8. Accordingly, **Justice (Retd.) J.R.Midha (Mobile: 9910384619)** is appointed the sole Arbitrator to adjudicate the dispute between the parties.

9. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The fee of the Arbitrator shall be in accordance with the Schedule of Fees prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018.

10. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

11. The present petition and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 28, 2022/r

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