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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.45 OF 2023
WITH
INTERIM APPLICATION (L) NO.5262 OF 2023
IN
ARBITRATION APPLICATION NO.45 OF 2023

Prince Cuisines Pvt. Ltd.] .. Petitioner

vs.

Green Shoot Ventures & Ors.] .. Respondents

Mr.Ranjeev Carvalho a/w Shubham Hundia and Avesh Ganja i/b Sriraj Menon for the Applicant.

CORAM : BHARATI DANGRE, J

DATE : 11th August, 2023.

P.C.

1] Mr. Carvalho, the learned counsel for the Applicant has tendered an Affidavit affirmed on 25.04.2023 reflecting the substituted service by way of paper publication in compliance with the directions issued by this Court. The affidavit alongwith the paper publication dated 14.04.2023 is taken on record and in the wake of the said Affidavit, the notice is deemed to have been served upon the Respondent.

2] By the present Applicant, the Applicant seek appointment of Sole Arbitrator for resolving the disputes that have arisen between the parties out of the Franchise Agreement dated 08.09.2018 alongwith

the Renewal Franchise Agreement dated 08.09.2021, since the disputes have arisen out of this contract entered between the parties.

3] The Franchise Agreement dated 08.09.2018 was executed for operating "Cream Centre-The Veg Edge" in Calcutta initially for the period of 3 years and it was subsequently renewed in the year 2021.

It is the contention of the Applicant that despite communication being issued claiming the royalty fees from April 2020, there was no response and this resulted in termination notice being issued and served upon the Respondent on 12.01.2022. Various email communications were addressed to the Respondent enlisting the amount due and payable, but since there was no response, ultimately on 28.04.2022, the Applicant invoked Clause 10 of the Franchise Agreement, which provided a mechanism for resolving the disputes in form of arbitration agreement and the dispute was clearly set out in the invocation notice.

By referring to distinct clauses of the Franchise/Supplementary Franchise Agreement, the relevant features were highlighted and the royalty amount which was raised by various invoices was categorically set out.

A reference is also made to the termination notice with a grievance that the Respondent failed to respond to either of the notices and in this backdrop, by affording an opportunity to the Respondent to comply with the requisition, the Clause 10 of the Franchise Agreement was invoked. Even the name of the proposed Arbitrator was forwarded, but evidently there is no response.

4] This has constrained the Applicant to approach this Court seeking appointment of Sole Arbitrator, on failure of the Respondent to

adhere to procedure set out in Clause 10 of the Agreement.

The respondent despite repeated efforts and substituted service have failed to mark their presence.

5] I have heard the learned counsel for the Applicant and perused the Franchise Agreement as well as Supplementary Franchise Agreement. Since the Arbitration Agreement exist between the parties and the arbitration has been invoked by the Applicant, with no compliance from the side of Respondent, I deem it appropriate to exercise power under Sub Section (6) of Section 11 of the Act to appoint a Sole Arbitrator to adjudicate the disputes that have arisen between the parties out of the aforesaid two agreements.

The appointment of the Arbitrator would be subject to the following terms and conditions :

TERMS OF APPOINTMENT :-

(a) Appointment of Arbitrator :

Advocate Mr.Alankar Kirpekar, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section

11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application, with a copy to be forwarded to both the parties.

(d) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the Arbitrator shall fix up a first date of hearing in the week commencing from 21.08.2023. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication information of the parties : Contact and communication particulars are to be provided by both sides to the Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(f) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) Fees : The Arbitrator shall be entitled for the fees as per the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All contentions of both sides are left open to be raised by the respective parties before the Arbitral Tribunal, in accordance with law.

Arbitration Application and Interim Application stand disposed off in the aforesaid terms.

[BHARATI DANGRE, J]