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Arb.O.P (Com.Div.) No.150 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.150 of 2023

M/s.Cut2Cut Ventures LLP,
Represented by Mr.Nitin Siva,
#30 (579), 10th Main, 32 'D' Cross,
4th Block, Jayanagar,
Bangalore, Karnataka 560011

... Petitioner

Vs.

M/s.GFM Retail Private Limited,
No.2, 4th Cross, 1st Main Road, S.V.S.Nagar,
Valasaravakkam, Chennai 600 087.

... Respondent

Arbitration Original Petition filed under Section 11(6)(A) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate the disputes that have arisen between the parties, in exercise of this Court jurisdiction under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 and to direct the respondent to pay the costs of the petition.

For Petitioner : Mr.S.M.Vivekanandh
For Respondent : Mr.G.Vairava Subramanian



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ORDER

This petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) for appointment of the Arbitrator.

2. The learned counsel for the petitioner would submit that the petitioner had entered into a franchise agreement dated 27.10.2021 with the respondent for investment and rights for opening of an outlet under the brand name “Tendercuts”. The said agreement was for a period of 5 years and the respondent had made their first pay-out on 10.02.2022 for the month of January, 2022. However, for the month of April, 2022, no payment has been made by the respondent and they had defaulted in payment for subsequent months without any explanations. A legal notice was sent by the petitioner on 05.12.2022 and a reply was received from the respondent on 15.12.2022 with baseless excuses. Hence the petitioner was forced to invoke the arbitration clause XIII of the said agreement and sent a notice with regard to the same on 05.01.2023. However, since the respondent had



refused to accept the nomination of Arbitrator made by the petitioner, this present petition is filed.

3. Further, the learned counsel for the petitioner would submit that the present dispute is arising out of the franchise agreement dated 27.10.2021 and the same is arbitrable under Clause XIII of the franchisee agreement, which reads as follows:

“XIII LEGAL

1. General: This agreement and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with law Indian Substantive and Procedural law, applicable to agreements made and to be performed entirely therein.

2. Arbitration: In the event of disputes that both parties are unable to solve through mutual discussion and compromise, the same shall be referred to a sole arbitrator, to be appointed by the company, as per the provisions of the Indian Arbitration and Conciliation Act, 1996. The outcome of the Arbitration shall be final and binding on both parties. The seat of arbitration shall be Chennai and the language of Arbitration shall be English.



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3. *Jurisdiction: The parties hereby agree and shall submit to the exclusive jurisdiction of the Courts at Chennai, Tamil Nadu."*

4. By referring the said clause, the learned counsel for the petitioner would submit that there is a provision available for unilateral appointment of Arbitrator by the applicant. However, since such appointment is not sustainable in view of the law laid down by the Hon'ble Apex Court, the present petition is filed before this Court.

5. Today, Mr.G.Vairava Subramanian, learned counsel had entered appearance on behalf of the respondent and would submit that he has no objection for appointment of Arbitrator.

6. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

7. In view of the above, this Court is satisfied that the present dispute is arising out of the said agreement and the same is arbitrable in terms of



Clause XIII of the agreement. Hence, this Court is inclined to appoint a sole Arbitrator.

8. Accordingly, this Court feels it appropriate to pass the following order:

i) Mr.T.Saikrishnan, Advocate, No.48, Moore Street, II Floor, Vanguard House, Chennai 600 001, Mobile No:9840229542, is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties

ii) 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 Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and



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thereafter, the petitioner can recover the same directly from the respondent and vice versa.

9. With the above directions, this Arbitration Original Petition is allowed.

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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KRISHNAN RAMASAMY.J.,
nsa

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