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Arb.Appln.No.404 of 2023

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C.SARAVANAN, J.

The applicant has filed this application for a direction to the respondent to furnish security to the tune of Rs.7,90,000/- paid by the applicant pursuant to the Tea Traffic Franchise Agreement dated 16.09.2022.

2. The applicant who is the franchisor has terminated the aforesaid Tea Traffic Franchise Agreement dated 16.09.2022 vide a letter dated 24.04.2023 as the minimum guarantee amount as was contemplated in the Tea Traffic Franchise Agreement dated 16.09.2022 has not been ostensibly paid to the applicant.

3. That apart, it is submitted that the respondent has also not shared any profit as is contemplated in the Agreement.



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4. On the other hand, the learned counsel for the respondent would submit that fraud was committed by the applicant and therefore this application is liable to be dismissed as the applicant is seeking equitable remedy.

5. It is further submitted that the amounts were paid for the Tea Traffic Shop on rent to the person identified by the applicant, who turned out to be the fraud that was identified by the applicant and foisted on the respondent.

6. It is therefore submitted that on this ground, this Arbitration Application is liable to be dismissed.

7. That apart, the learned counsel for the respondent submits that there are no assets barring a deposit of Rs.1,50,000/- paid for the Pollachi Outlet and the equipments worth about Rs.2,40,700/- installed



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at the said outlet and another security deposit of Rs.1,50,000/- paid for their registered premises.

8. The details of the amounts paid and the receipts are not disclosed in the affidavit filed by the respondent. However, it is clear that there is a dispute between the parties. The Franchise Agreement dated 16.09.2022 contemplates resolution of dispute by way of arbitration.

9. Relevant Clause for resolving the dispute between the parties under the Franchise Agreement dated 16.09.2022 reads as under:-

"Jurisdiction and Dispute Resolution:

The Agreement shall be governed and construed in accordance with the laws of India and subject to Clause 14 below, the Parties shall submit to the exclusive jurisdiction of Courts in Chennai.

In the event of any dispute or difference between the Parties hereto, whether arising out of or in relation to this Agreement, then either Party shall



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give to the other Party a notice in writing of such dispute or difference and the same shall be settled at the first instance, by arbitration in Chennai, by a sole arbitrator appointed by mutual consent of both the Parties herein within a period of 30 (thirty) days from notice of dispute. If the Parties fail to appoint a sole arbitrator within the given time, the arbitrator shall be appointed in accordance with the Arbitration and Conciliation Act, 1996, or any statutory modification or substitution thereof ("Arbitration Act"). The Parties agree that the rights and obligations of the Parties under this Agreement shall subsist and continue till the final determination of the dispute by the arbitrator or by a court of law as specified under."

10. Be that as it may, this Court is of the view that this is a fit case for referring the dispute to an arbitrator in terms of the aforesaid Tea Traffic Franchise Agreement dated 16.09.2022.



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11. Considering the above, this Court is inclined to appoint **Mr.K.Pradeep, Advocate, Enrollment M.S.No.639/1988 (Cell No.98409 69412) having Office at D-23, 'Sahithyam', Church Road, Mogappair East, Chennai - 600 037,** as an arbitrator to enter upon reference and resolve the *inter se* disputes between the parties.

12. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.



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13. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the learned Arbitrator and later recover the same from the respondent.

14. Since this Court has appointed the Arbitrator, it is open for the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

15. In addition, the interim protection granted by this Court on 22.09.2023 shall continue till the disposal of the arbitration proceedings by the learned Arbitrator.



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WEB COPY 16. This Arbitration Application is allowed accordingly, leaving the parties to bear their own costs.

06.11.2023

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