



WEB COPY

Arb.O.P.(Comm.Div.)No.618 of 20__



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2023

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.)No.618 of 2022

TOVO RESTAURANTS PRIVATE LIMITED,

Represented by its Director

Mr.Arun Prashanth

Having Office at:

49, Jeya Nagar,

1st Street, K.K.Nagar, Trichy,

Tiruchirappalli, Tamil Nadu – 620 021.

...Petitioner

Versus

Mr.A.T.Ravi Chandiran

...Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint a sole arbitrator to adjudicate the disputes between the petitioner and the respondent.

For Petitioner : Mr.K.Mohit Kumar

For Respondent : No Appearance

ORDER

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to appoint a sole arbitrator to adjudicate the disputes between the petitioner and the respondent.



WEB COPY



2. The learned counsel for the petitioner submitted that the petitioner is the absolute owner of all valuable intellectual property rights as well as intrinsic know-how in relation to the Brand including trademarks, trade names, service marks, copyrights, designs, domain names, patents, know-how, signages, branding labelling including graphics in respect of TOVO, Thambi Vilas, TOVO Restaurants, TOVO Infusions and has been providing services in relation to setting up and operation of restaurants operating under the Brand. The petitioner and the respondent have entered into a Franchise Agreement dated 12.03.2020. Under the said Agreement, the petitioner appointed the respondent as its Franchisee for the purpose of setting up and operating the Restaurant in Kanchipuram under the Brand which shall be Franchisee-owned and Franchise partner-operated, subject to the terms and conditions more particularly set out therein. The respondent has paid a sum of Rs.25,00,000/- to the petitioner, as Franchisee fee for the license of the brand for a period of 9 years under the Franchisee Agreement.

2.1. Thereafter, the parties have entered into a Construction Agreement dated 12.03.2020, as per which, the Franchise Restaurant should



WEB COPY



be set up on the premises situated at 1st Floor, 'Lakshmi Narayana Mahal', NH-4, Bangalore Highway, Enathur Village, Kancheepuram, measuring to an extent of 4000 Sq.ft which is owned by one M/s.Dynamic Products and the respondent is one of the partners of the said concern. As per Clause 1.1. of the said Construction Agreement, the respondent shall be liable for the entire cost of the construction.

2.2. The learned counsel further submitted that during April 2020, due to Covid-19 pandemic, the construction work was delayed. When the lockdown imposed by the Central Government was relaxed, the respondent made a request to the petitioner to execute the construction of the desired restaurant. The said construction work was commenced on 28.10.2020 and completed on 03.03.2021. The petitioner had issued invoices to the tune of Rs.77,13,057/-. However, the respondent has paid only a sum of Rs.37,50,000/- and he has not yet paid the balance amount of Rs.39,63,057/-. Though the petitioner vide communications dated 17.04.2021, 30.04.2021, 03.05.2021 & 27.05.2021, demanded the respondent to pay the balance amount, there was no response for the same. The petitioner vide e-mail dated 28.02.2021, sent a list of staff working in



WEB COPY



Arb.O.P.(Comm.Div.)No.618 of 20__

the Franchisee Restaurant to the respondent and requested him to pay their monthly salary on or before 7th day of every English Calendar Month. After the second wave of Covid-19 Pandemic, the Franchise Restaurant started to function from 08.07.2021. However, the respondent had not employed the minimum required number of employees in the said Franchise Restaurant and worked under manpower, causing deficiency in service and leading to customer dissatisfaction. The respondent again closed the franchise restaurant from 05.08.2021, in order to address the plumbing issues and he never re-opened the franchise restaurant again.

2.3. While so, the respondent had issued a Legal Notice dated 15.12.2021 to the petitioner and its Directors, terminating the aforesaid Agreements and further, calling upon them to pay a sum of Rs.62,50,000/- and informing the petitioner to take back the entire used materials lying in the aforesaid premises. As reply to the said notice, the petitioner vide Letter dated 13.01.2022, calling upon the respondent to restrain them from leasing the subject premises to any other persons or entity without prior approval of the petitioner and further, pay the petitioner a sum of Rs.39,63,057/- towards outstanding on account of BOQ of the constructions of the



WEB COPY



restaurants in the subject premises and also, for a sum of Rs.20,00,000/- as damages for loss of goodwill and customer dissatisfaction apart from the revenue loss suffered by the petitioner at the hands of the respondent. The respondent vide Rejoinder dated 04.03.2022, denying the averments of the petitioner in its reply.

2.4. Since the respondent did not clear the dues, the petitioner has invoked Clause 27 of the Construction Agreement by referring the dispute between the parties to arbitration. As per Clause 27 of the Construction Agreement, the dispute involved herein is arbitrable. For better appreciation, Clause 27 of the Construction Agreement 12.03.2020 is extracted hereunder:

“27. Dispute Resolution

Any disputes arising out of this Agreement shall be resolved by Arbitration conducted by a Sole Arbitrator in accordance with the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be at Chennai. The language of the Arbitral proceedings shall be in English. The costs of the arbitration shall be shared by the Parties.”

2.5. The petitioner has issued a Arbitration Notice dated 18.06.2022 under Section 21 of the Act to the respondent, nominating Ms.Arva



Merchant, Advocate as sole arbitrator to adjudicate the dispute involved herein. However, the Arbitration Notice sent by the petitioner was returned with the postal endorsement, “Refused”. As no consent was given by the respondent to the appointment of sole arbitrator, the petitioner has filed the present petition for the aforesaid relief. Therefore, the learned counsel prayed this Court to appoint a Sole Arbitrator, for adjudicating the dispute between the parties.

3. Despite the service of Court Notice, none appeared on behalf of the respondent. This shows that the respondent is not interested in prosecuting the case.

4. Heard the learned counsel for the petitioner and perused materials placed before this Court.

5. From a perusal of the records, it is seen that the petitioner and the respondent have entered into a Franchise Agreement dated 12.03.2020. Under the said Franchise Agreement, the petitioner appointed the respondent as its Franchisee for the purpose of setting up and operating the



WEB COPY

Restaurant in Kanchipuram under the Brand which shall be Franchisee-owned and Franchise partner-operated, subject to the terms and conditions more particularly set out therein. The respondent has paid a sum of Rs.25,00,000/- as Franchisee fee for the license of the brand for a period of 9 years under the Franchisee Agreement, to the petitioner. Thereafter, the parties have entered into a Construction Agreement dated 12.03.2020, as per which, the Franchise Restaurant should be set up on the premises situated at 1st Floor, 'Lakshmi Narayana Mahal', NH-4, Bangalore Highway, Enathur Village, Kancheepuram, measuring to an extent of 4000 Sq.ft. The said premises is owned by one M/s.Dynamic Products and the respondent is one of the partners of the said concern. The construction work was commenced on 28.10.2020 and completed on 03.03.2021. The petitioner has issued invoices to the tune of Rs.77,13,057/-. However, the respondent has paid only a sum of Rs.37,50,000/- and he has not yet paid the balance amount of Rs.39,63,057/-. Though the petitioner vide communications dated 17.04.2021, 30.04.2021, 03.05.2021 & 27.05.2021, demanded the respondent to pay the balance amount, there was no response for the same. Since the respondent did not come forward to pay the dues, the petitioner has invoked Clause 27 of the Construction Agreement by referring the



dispute to arbitration by nominating one Ms.Arva Merchant as Sole Arbitrator to adjudicate the issue involved herein. The petitioner has also issued Arbitration Notice to the respondent in this regard. However, the respondent did not give his consent to the appointment of sole arbitrator. Hence, the petitioner has filed the present petition.

6. Considering the above facts and circumstances of the case and having regard to the submissions made by the learned counsel for the petitioner, it is crystal clear that the dispute involved herein is arbitrable as per Clause 27 of the Construction Agreement entered into between the parties. Hence, this Court is inclined to pass the following order:

(i) Mr.K.V.Muthu Visakan, Advocate, having office at C-Block, Sunflower Apartment, No.10, Mandapam Cross Street, Kilpauk, Chennai – 600 010, Mobile No. 9841235688 is appointed as the Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.

(ii) The learned Arbitrator shall pass award within a period of six months from the date of receipt of a copy of this order, only after issuing notice to the parties and hearing them.



WEB COPY



(iii) The parties shall pay fees and other incidental charges to the learned Arbitrator fixed by him, equally.

(iv) In the event of non-appearance of the respondent before the learned Arbitrator, petitioner shall pay the entire remuneration and other expenses at first instance and thereafter, petitioner can recover the same directly from the respondent.

7. Accordingly, this petition is ordered. The parties shall bear their own costs. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996, before the Arbitrator.

28.02.2023

mrr

Index : Yes/No

Speaking Order (or) Non Speaking Order



WEB COPY



Arb.O.P.(Comm.Div.)No.618 of 20__

KRISHNAN RAMASAMY, J.

mrr

Arb.O.P.(Comm.Div.)No.618 of 2022

28.02.2023