

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

% **Date of order : 27th March, 2023**

+ **ARB.P. 60/2023**
M/S AMBIENCE COMMERCIAL DEVELOPERS PVT LTD

..... Petitioner

Through: **Mr. P. K. Agrawal and Ms. Shreya Anil, Advocates**

versus

M/S MEDUSA FASHION Respondent

Through: **None**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter "Arbitration Act") has been filed on behalf of the petitioner seeking the following reliefs:-

"A. Confirm the appointment of Hon'ble Mr. Justice N.K. Mody, retired Judge Madhya Pradesh High Court to adjudicate all disputes between the parties arising out of the MOU dated 15.07.2022.

B. In the alternative appoint an independent arbitrator preferably retired judicial officer to adjudicate all disputes between the parties arising out of the MOU dated 15.07.2022

C. Any other relief that this Hon'ble Court may deem just and fit may also be granted"

2. A perusal of the background of the instant matter reveals that the

petitioner is a Company registered under the Companies Act, 1956 and is the owner of the shopping mall, namely, 'Ambience Mall' located at Nelson Mandela Marg, Vasant Kunj, Phase-2, New Delhi-110017. The respondent is the proprietorship concern engaged in the business of fashion garments and apparels, of which one Ms. Sonal Jindal is the sole proprietor.

3. The parties came together when the respondent approached the petitioner for holding exhibitions of premium apparels and fashion garments of well-known fashion designers. The petitioner, upon agreement, temporarily allotted the respondent the space specifically earmarked for such kind of exhibitions for a limited period of four months. Accordingly, a Memorandum of Understanding (hereinafter "MoU") dated 15th July 2022 was executed by the parties incorporating the terms and conditions of the agreement of license between them. The said MoU also consists of Clause 8 which provides for invocation of arbitration proceedings to resolve the disputes between the parties, if any.

4. The learned counsel appearing on behalf of the petitioner submitted after signing the said MoU, the respondent paid a total amount of Rs. 14,00,000/- out of the total agreed amount of Rs. 88,50,000/-. The balance amount in the sum of Rs. 74,50,000/- has not been paid by the respondent till date. It is submitted that instead of making the balance payments to the petitioner, the respondent issued a Notice dated 10th October, 2022 demanding a compensation of Rs. 1,00,00,000/- towards its alleged loss of reputation, another sum of Rs. 1,00,00,000/- towards the alleged loss of the designers and further demanded refund of Rs.

14,00,000/- paid by the respondent towards license fee. Consequently, the petitioner, vide its Notice under Section 21 of the Arbitration Act dated 26th October, 2022, informed the respondent that, in terms of the arbitration clause, an arbitrator is to be appointed by the petitioner for redressal of the disputes arisen between the parties. The petitioner proposed the name of Justice Mr. N.K. Mody (Retired Judge, Madhya Pradesh High Court), as the Sole Arbitrator to resolve the disputes between the parties.

5. It is submitted that the respondent did not reply to the Notice under Section 21 of the Arbitration Act and defaulted in paying the amount due in favour of the petitioner. Therefore, the petitioner before this Court has sought appointment of a Sole Arbitrator to adjudicate the arbitral disputes that have arisen between the parties.

6. No one has appeared on behalf of the respondent today either to take to a passover or an adjournment even on the second call. On 22nd February, 2023, the learned counsel for the respondent prayed for taking instructions for filing reply/objection, if any, however, the same has also not been filed on behalf of the respondent.

7. Heard learned counsel for the petitioner and perused the record.

8. The parties before this Court signed the MoU dated 15th July 2022 wherein a provision has been made for adjudication of any dispute amongst them by way of arbitration. The said provision, that is, Clause 8 of the MoU, is reproduced hereunder:-

“8. Arbitration and Jurisdiction:

Any difference or dispute arising between the Parties arising out of or in relation to this MOU shall be referred to the sole Arbitrator appointed by the First Party. The arbitration shall be conducted under the Arbitration & Conciliation Act, 1996. The award of the Arbitrator shall be final and binding upon the parties. The venue of the arbitration shall be at New Delhi. This MOU shall be subject to the exclusive jurisdiction of the Courts of Delhi.”

9. The bare language of the provision shows that the petitioner herein, being the First Party referred to in the Clause, has the power to appoint an arbitrator for reference of any difference or dispute arising out of the MoU. Therefore, it is evident that the MoU between the parties makes provision for adjudication of disputes through arbitration.

10. The petition discloses that there are disputes between the parties which pertain to the balance amount out of the total amount agreed upon for the execution of the MoU. Therefore, the said disagreement/difference or dispute admittedly stems from the MoU dated 15th July 2022.

11. Despite issuance of notice by this Court no one appeared on behalf of the respondent today even on second call. Moreover, on the last date of hearing the learned counsel for the respondent sought time to file reply, which is still not on record.

12. At this juncture, this Court finds it relevant to reiterate the spirit of the Arbitration Act. The Arbitration Act and the provisions therein encourage that the parties to a dispute may be referred to arbitration where there exists an arbitration clause/agreement, the disputes between the parties are arbitral in nature and a prior notice is served upon the other party to the dispute.

13. In the instant petition as well, there is an arbitration clause in existence, that is, Clause 8 of the MoU, disputes have arisen between the parties which are arising from the said MoU and are arbitrable in nature and the petitioner has also served a Notice under Section 21 of the Arbitration Act.

14. The intent behind Arbitration Act is not to prolong the disputes between parties but is to make the resolution process accessible, easier and more efficient. This Court, therefore, does not find any reason to delay the adjudication of a petition under Section 11(6) of the Arbitration Act, when all necessary requisites are being met for granting the relief sought on behalf of the petitioner. Therefore, considering the spirit of the Arbitration Act, and the fulfilment of all necessary ingredients for appointment of an arbitrator under Section 11(6) of the Arbitration Act, this Court is inclined to refer the parties to arbitration for resolution of their disputes.

15. Accordingly, keeping in view the above facts and circumstances, this Court finds it appropriate to refer the disputes between the parties to a sole arbitrator. Hence the following order:

ORDER

- (i) Mr. Rajeev Saxena, Advocate is appointed as a sole arbitrator under the aegis of the Delhi International Arbitration Centre to adjudicate the disputes between the parties which have arisen under the MoU dated 15th July 2022;
- (ii) The learned sole arbitrator, before entering the arbitration

reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;

- (iii) The learned sole arbitrator shall be paid fees as prescribed under The Delhi International Arbitration Centre (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;
- (iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;
- (v) All contentions of the parties are expressly kept open.

16. A copy of the order be forwarded to the learned sole arbitrator on the following address:

Mr. Rajeev Saxena, Advocate

Address- 708, Lawyers' Chamber Block- III

High Court of Delhi, New Delhi- 110003

Contact No.- +91 9810811180

17. Accordingly, the instant petition is disposed of alongwith pending applications, if any.

18. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 27, 2023

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Click here to check corrigendum, if any

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