

OCD-13

IN THE HIGH COURT AT CALCUTTA
Ordinary original civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP-COM/556/2024
FUNTAIL ENTERPRISE
VS
STITCH FAB(INDIA) PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 13th May, 2024.

Appearance:

Mr. Aritra Basu, Adv.

Mr. S.K. Singhi, Adv.

Ms. Riti Basu, Adv.

Mr. Sayan Banerjee, Adv.

...for the petitioner.

Mr. Mainak Bose, Adv.

Mr. Rishabh Karnani, Adv.

Mr. Anurag Bagaria, Adv.

...for the respondent.

The Court: This is an application under Section 11 read with Section 15 of the Arbitration & Conciliation Act, 1996.

The disputes between the parties arise out of a Licence Agreement dated 19 April, 2016.

Clause 28 of the agreement dated 19 April, 2016, inter alia, provides as follows :

"28. Conciliation and Arbitration

Any difference or dispute arising between the Parties arising out of or in relation to this Agreement to License and its Schedules, Annexures thereto or the Maintenance Agreement or any other congruent Agreement, shall be referred to the Sole Arbitrator mutually appointed by the Licensor and Licensee. The Licensee hereby confirms that it shall have no objection to such

appointment even if the person so appointed, as the Arbitrator, is an employee, attorney/advocate, consultant of the Licensor or is connected to the Licensor. The Licensee further confirms that it shall not suspect the impartiality or fairness of the Arbitrator due to such association of the Arbitrator with the Licensor. Reference to arbitration shall be without prejudice to the rights of Licensor to take any action against or recover any dues from the Licensee. The arbitration shall be conducted under the Arbitration & Conciliation Act, 1996 or its statutory modifications amendments or re-enactment thereof. The award of the Arbitrator shall be final and binding upon the Parties. The venue of the arbitration shall be Kolkata. The language of the arbitration shall be in English. The governing law shall be Indian Law. The Arbitration Proceedings and all other matters connected to arbitration shall be subject to the exclusive jurisdiction of Courts at Kolkata. The Parties will be entitled to both interim relief and award including but not limited to injunctions, permanent and mandatory and temporary as well as final. The Parties will be entitled to interim relief at any stage i.e., before, during or after arbitration as the case may be. The Sole Arbitrator shall have the power to proceed summarily. The Sole Arbitrator shall decide the procedure to be adopted for the Arbitration Proceeding.”

It is submitted that pursuant to the above clause, a Sole Arbitrator had been appointed to adjudicate upon the disputes between the parties arising out of the agreement dated 19 April, 2016. However, the Sole Arbitrator has refused and is unable to act as Arbitrator. It is submitted on behalf of the respondent that the mandate of the Arbitrator had also been challenged and the issue was pending before the Arbitrator.

Be that as it may, admittedly, the Sole Arbitrator appointed in terms of an alleged notice dated 20 October, 2020 has withdrawn from office and is no longer agreeable to act as Arbitrator. Accordingly, the mandate of the Arbitrator stands terminated.

By consent of the parties, AP-COM/556/2024 stands disposed of by appointing Hon'ble Mr. Justice Subrata Talukdar (Retired) as Arbitrator in terms of the aforesaid clause, subject to the Arbitrator communicating his consent to the Registrar, Original Side of this Court within three weeks from date.

The Advocate on Record of the petitioner shall communicate this order to the Arbitrator forthwith and positively within 10 days from the date of passing of this order.

With the aforesaid directions, AP-COM/556/2024 stands disposed of.

By consent of the parties, all questions both in respect of maintainability and merits are left open to be adjudicated upon by the Learned Arbitrator.

(RAVI KRISHAN KAPUR, J.)