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Arb.O.P.(Comm.Div.) No.494 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.12.2024

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THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

Arb.O.P.(Comm.Div.) No.494 of 2024

Mrs. Himaya Prasad

... Petitioner

VS.

M/s. Gharwaala Tiffin Private Limited,
A Private Limited Company
within the meaning of Companies Act, 2013
Having CIN U55200TN2016PTC111731
Represented by its authorized representative,
Nikhil Kaushik, 132, Sterling Road,
Nungambakkam, Chennai -600 034.

... Respondent

PRAYER: Arbitration Original Petition filed under Sections 11 (6) read with Sections 15(1) & 15(2) of the Arbitration and Conciliation Act, 1996 and Section 2(1)(c)(VIII) and Section 10(2) of the Commercial Courts Act, 2015 to appoint Substitute Arbitrator in terms of Clause XXI of the Franchise Investment Agreement dated 18.11.2017 to resolve the disputes between parties, in accordance with the Arbitration 85 Conciliation Act, 1996.



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For Petitioner : Mr.R.Vidhya Shankar

For Respondent : No Appearance.

ORDER

This Arbitration Original Petition has been filed under Section 11(6) read with Sections 15(1) & 15(2) of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') to appoint a substitute Arbitrator in terms of Clause XXI of the Franchise Investment Agreement dated 18.11.2017 to resolve the disputes between parties.

2. I have heard Mr.R.Vidhya Shankar, learned counsel for the petitioner. There is no appearance on the side of the respondent. In fact, this Court permitted effecting service on the respondent through Substituted Service and publication has also been effected pursuant to the order of this Court dated 02.12.2024 for the hearing date, 19.12.2024. Despite the publication in one issue of VIRTUAL TIMES, dated 10.12.2024, the respondent has neither chosen to appear in person nor through counsel.



Therefore, the respondent is hereby set exparte.

WEB COPY 3. I have proceeded to hear the learned counsel for the petitioner Mr.R.Vidya Shankar and I have also perused the records.

4. The case of the petitioner is that the respondent herein is a Private Limited Company and is engaged in the business of serving home-style North Indian and Chinese Food items to their customers through their own outlets and also by franchising outlets and is operating its business in the name and style of “*Gharwaala Tiffin*”. In order to expand the business, the respondent approached the petitioner and entered into a Franchise Investment Agreement dated 18.11.2017. Disputes have admittedly arisen between the petitioner and the respondent which is evident from the exchange of series of correspondence between the parties.

5. When disputes arose between the parties, the petitioner made efforts to approach the National Company Law Tribunal as a Financial Creditor. On 26.03.2021, the Tribunal dismissed the matter and observed



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that the Petitioner can invoke the Arbitration Clause. Accordingly, the petitioner issued a legal notice on 09.08.2021 to the respondent demanding payment of the guaranteed monies. On 31.03.2022, by mutual consent, Sole Arbitrator viz., Mr.Krishna Prasad, Advocate was appointed by the parties to adjudicate the dispute between them. The learned counsel for the petitioner requested the Sole Arbitrator to hold a preliminary meeting to lay down the revised Schedule for completion of pleadings and he has followed up with the Arbitrator multiple times and sent reminder emails in that regard as well. The Sole Arbitrator, after a lapse of 2 months, vide E.mail dated 29.08.2024 has expressed his inability to continue with proceedings in view of his work commitments. Hence, the above Arbitration Original Petition has been filed for reconstitution of the Arbitral Tribunal.

6. Even before this Court, the respondent has not chosen to appear despite attempts made by the petitioner to serve notice and finally substituted service was permitted and the same was also effected, but the respondent has not chosen to appear before this Court also. Therefore,



petitioner is entitled to seek appointment of a substitute arbitrator in terms of Clause XXI of the Franchise Investment Agreement dated 18.11.2017 to adjudicate the disputes between the petitioner and the respondent.

7. In view of the same, there is no impediment for terminating the mandate of the earlier Arbitrator viz., Mr.Krishna Prasad, Advocate. Accordingly, this Court is inclined to appoint a new Arbitrator viz., **Mr.SANJAY PINTO, Advocate, having address at No.5, 'MANASAROVAR', 1st Floor, 60, C.P.Ramaswamy Road, Alwarpet, Chennai – 600 018, Cell: 98400 91547, [E.Mail legal@sanjaypinto.com](mailto:legal@sanjaypinto.com), sanjaypinto@hotmail.com** as the Sole Arbitrator. The sole Arbitrator is directed to enter upon reference and adjudicate the dispute in accordance with law.

8. The learned Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Arbitrator to endeavor to decide the dispute as expeditiously as possible, however, not



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later than six (6) months from the date of his entering into reference.

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9. Accordingly, this Arbitration Original Petition is allowed.

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Internet : Yes / No



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P.B.BALAJI, J.,

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