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

+ ARB. P. 128/2023

Reserved on: 15.01.2024

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Pronounced on: 26.02.2024

MRVS VALUE STRAIGHT PRIVATE LIMITED & ANR.

..... Petitioners

Through: Mr.Pradeep Kumar Arya, Mr.Aditya
Yadav, Mr.Gaurav Chaudhry,
Mr.Pulkit Chadha, Mr.ArpitBamal
and Mr.Vaibhav Chaudhry, advts.

versus

BRIGHTSTAR RESTAURANT PVT. LTD. & ORS.

..... Respondent s

Through: Mr.Abhimanyu Arun Walia and
Mr.Harsh Chauhan, Advts. for R-1.
Mr.Chand Chopra, Ms.Ruchika Rao
and Ms.Bhpathi Raju, advts. for R-3.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G E M E N T

DINESH KUMAR SHARMA, J.

1. The present petition has been filed under section 11(4) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "A&C Act"*) seeking the appointment of an arbitrator for adjudicating the *inter-se* disputes having arisen between the parties out of the



‘Memorandum of Understanding’ (*hereinafter referred to as ‘MoU’*) dated 14.08.2018.

2. Briefly stating the facts, Mr. Vaibhav Gupta and Shalini Tyagi entered into an MoU dated 14.08.2018 with the respondents in regard to lease new furniture, fixtures, fittings and interior works. Subsequently, the petitioners agreed to register a private limited company as per clause 3(k) of the MoU.
3. The company was registered under the name ‘MRVS Value Straight Private Limited’. As per the MoU dated 14.08.2018, the petitioners were termed as the “Lessors” and the respondent was termed as “Lessee”. The petitioner stated that subsequently, Mr. Vaibhav Gupta resigned from the post of CEO of the company and his father Mr. Mewa Lal Gupta joined as CEO of the company and the lessee to the MoU also changed his name from ‘Cybiz Brightstar Restaurants Private Limited to Brightstar Restaurant (Carl’s Junior)’.
4. The petitioner stated that as per the MoU, the petitioner had to invest Rs. 1,55,00,000/- to complete the entire work of the food and beverage outlet and the petitioners invested Rs. 1,53,00,000/-. However, the respondent did not act according to the MoU and failed to make the payment. The effort to resolve the dispute amicably did not succeed. The petitioner thereafter served a notice dated 22.02.2022 and invoked the arbitration clause by virtue of Clause-5 in the MoU.
5. Since the notice could not be served, the petitioner sent the notice dated 21.03.2022 on a fresh address. However, this time again the notice came back again with a remark ‘left’. The petitioner thereafter filed a



arbitration petition bearing No. 1004/2022. The petition was dismissed as premature with liberty to the petitioner to approach the court again.

6. The petitioner submitted that as per the directions of the court, the arbitration was invoked again. This time also despite the notice having been sent on the address given by the learned counsel for respondent No.2 in arbitration petition No. 1004/2022, came back unserved. However, respondent No.1 in its reply refused to settle the present dispute and stated that the internal dispute of the company is already pending in the arbitration proceedings. Respondent No.1 also shifted the blame on one Mr. Samir Chopra who is the director of respondent No.1 company and resigned from the directorship of the company on 05.11.2020.
7. The company master data was filed which reveals that 'MRVS Value Straight Private Limited' was incorporated on 20.09.2018. It is also pertinent to mention here that in the petition it was stated that the petitioners are not concerned with the business partnership agreement executed on 25.09.2018 and the petitioners were not a party to the said agreement and thus not applicable to the petitioners.
8. Respondent No.1 in their reply has submitted that on 14.08.2018 an MoU was executed between Mr. Vaibhav Gupta and Shalini Tyagi and respondent No.1. According to the said MoU it was agreed between the parties that Mr. Vaibhav Gupta and Shalini Tyagi will invest in Carl's Junior Restaurant at Ambience Mall, Gurugram. The respondent No.1 stated that it was further agreed that a definitive agreement would be executed between the parties to formalise the relationship between the parties.



9. It was further stated that Mr. Vaibhav Gupta and Shalini Tyagi registered a private limited company under the name 'MRVS Value Straight Private Limited' on 20.09.2018 and asked respondent No.1 to execute an agreement with 'MRVS Value Straight Private Limited' to formalise the relationship between Mr. Vaibhav Gupta and Shalini Tyagi.
10. It was further stated that petitioner No.1 and respondent No.1 executed a business partnership agreement on 25.09.2018 which superseded the MoU dated 14.08.2018. It has further been stated that it was agreed that if in case CKE, which is the owner of the brand Carl's Junior, terminate the license of respondent No.1 to operate the food and beverage outlet in the name of Carl's Junior, the said agreement should be treated as a force majeure clause.
11. It was further stated that though for some time the restaurant ran successfully and profits were shared. However, on account of COVID, the CKE restaurant cancelled the license of respondent No.1. It was stated that an email dated 30.10.2021 was sent to petitioner No.1 regarding the "cease and desist" notice and termination of the license of respondent No.1 for running the restaurants in the name of Carl's Junior by CKE Restaurants.
12. It was further stated that respondent No.1 is a defunct company and is not making any revenue and all the restaurants operated by respondent No.1 have now ceased to do any operation.
13. Respondent No.1 further stated that the MoU was duly superseded by the business partnership agreement dated 25.09.2019. Respondent No.1



also denied having received the notice under Section 21 of the A&C Act.

14. It was further stated that petitioner No.1 who was not a party to the MoU dated 14.08.2018 could not have invoked arbitration under the MoU dated 14.09.2018 as the same stood superseded by the execution of the business partnership agreement dated 25.09.2018.
15. The respondent stated that the petitioners have intentionally withheld the business partnership agreement dated 25.09.2018. The respondent No.1 further stated that in any case if the right to invoke the arbitration exists, it can only be invoked by Mr. Vaibhav Gupta and Shalini Tyagi and not by the present petitioner.
16. Respondent No.3 in their reply submitted that this court has no jurisdiction to adjudicate the dispute between non-signatories to an arbitration agreement. It has been submitted that the MoU dated 14.08.2018 was executed between Mr. Vaibhav Gupta and Shalini Tyagi on the one hand and 'Cybiz Brightstar Restaurants Private Limited'.
17. It has further been submitted that the present petition has neither been filed by Mr. Vaibhav Gupta nor Mrs. Shalini Tyagi and therefore, the present petition is liable to be dismissed.
18. The jurisdiction under Section 11 of the Arbitration and Conciliation Act while making the reference is no longer *res integra*. The courts have time and again *inter alia* enumerated that the jurisdiction of the Court under Section 11 of the Act is limited to the extent that the court is only required to see whether there is an arbitration agreement and whether an arbitrable dispute exists between the parties. Reliance can



be placed upon *M/S Duro Felguera, S.A. vs Gangavaram Port Limited* (2017) 9 SCC 729.

19. It is a matter of record that initially an MoU dated 14.08.2018 was executed by Mr. Vaibhav Gupta and Shalini Tyagi with 'Cybiz Brightstar Restaurants Private Limited'. The petitioners have denied having executed any business partnership agreement. It is interesting to note that the notice invoking arbitration dated 03.10.2022 refers to the MoU dated 14.08.2018 and the arbitration has been invoked on the basis of the terms and conditions of the MoU.
20. It is a matter of record that the petitioners were not party to the MoU thus there is no privity of contract between the petitioners and the respondent. Even as per the case of the petitioner there is no agreement between the petitioner and the respondent which contains the arbitration clause. The MoU was entered into between Mr. Vaibhav Gupta and Shalini Tyagi and neither of them has approached the court therefore, in absence of any agreement between the parties containing arbitration clause, the matter cannot be referred to the arbitration.
21. In view of the above, the present petition stands dismissed.

DINESH KUMAR SHARMA, J

FEBRUARY 26, 2024/AR