



2024:DHC:2310



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 14th March, 2024***
+ **O.M.P. (T) (COMM.) 22/2024**

BIKANERVALA FOODS PVT LTD Petitioner

Through: Mr. Umesh Mishra, Advocate.

versus

M/S. NAMASTE FOODS & ORS. Respondents

Through: Mr. Rajesh & Mr. Aditya, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

I.A. 5926/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The present Petition under Section 15 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner seeking substitution of Arbitrator on account of death of previous Ld. Arbitrator.
4. It is submitted that the Franchise Agreement dated 14.04.2013 was executed between the petitioner and the respondents and the rights were granted to the respondents to open, run and operate the aforesaid outlets and



to sell its various products

5. It is further submitted that because of some defaults made by the respondents under the Franchise Agreement dated 14.04.2013, a 30-day Legal Notice dated 08.08.2016 was served upon the respondents for termination of the Franchise Agreement.

6. The Notice of Invocation dated 12.06.2017 invoking arbitration in terms of Clause 24 of the Franchise Agreement dated 14.04.2013 was thereafter, served upon the respondents and Hon'ble Judge(Retd.) of this Court, was appointed as the sole Arbitrator.

7. The proceedings commenced and first meeting was held by the Id. Arbitrator on 30.09.2017.

8. The Petition under Section 29A of the Act, 1996 bearing No. *O.M.P.(MISC)(COMM.) 227/2019* was filed for extension of the mandate of the sole Arbitrator by eight months, commencing from 27.05.2019 which was allowed *vide* Order dated 27.05.2019.

9. The proceedings were at the stage of final arguments, when the mandate of the sole Arbitrator expired on 27.01.2020.

10. The second Petition under Section 29A of the Act, 1996 bearing No. *O.M.P.(MISC)(COMM.) 104/2020* was filed on 12.03.2020 for further extension of the mandate of the sole Arbitrator for making the Award.

11. It is submitted that during the pendency of *O.M.P.(MISC)(COMM.) 104/2020*, the sole Arbitrator expired on 22.04.2021 and the petition was disposed of by this Court *vide* Order dated 14.07.2021 by observing that since the sole Arbitrator has expired, no further order for extension of the mandate of the Arbitrator could be passed and the liberty was granted to the petitioner to move an appropriate application for the appointment of the



Arbitrator in place of deceased Arbitrator.

12. The petitioner could not have appointed the sole Arbitrator in view of the Judgment of the Apex Court in Perkins Eastman Architects DPC vs. HSCC (India) Ltd., (2020) 20 SCC 760. Therefore, the present petition has been filed within the period of limitation of three years from the date of demise of the sole Arbitrator.

13. Hence, the prayer is made to appoint a substitute Arbitrator in order to adjudicate upon the Claims/Counter-Claims filed by the respective parties under the aegis of Delhi International Arbitration Centre, High Court of Delhi.

14. The present petition is opposed on behalf of the respondents who claim that Clause 24 of the Franchise Agreement dated 14.04.2013 provided that the Arbitrator could be appointed by the petitioner; since the petitioner has failed to do so, it cannot now invoke the jurisdiction of this Court under Section 15 of the Act, 1996.

15. **Submissions heard.**

16. *Section 14 of the Act, 1996* provides that the mandate of the Arbitrator shall terminate and he shall be substituted by another Arbitrator, if he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay.

17. *Section 15 of the Act, 1996* provides that the mandate of the Arbitrator shall terminate when he withdraws from his office or for any reason or pursuant to the agreement of the parties. Section 15(2) of the Act, 1996 provides that when a substitute Arbitrator is appointed, *it may be done according to the Rules as are applicable to the appointment of the Arbitrator.*



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18. In the present case, the sole Arbitrator has become *de jure* unable to perform his functions on account of his demise. Therefore, in terms of Arbitration Clause 24 of the Franchise Agreement dated 14.04.2013 *inter se* the parties, the present petition is allowed, and Mr. Justice Jayant Nath, (Retd.), Mobile No. 8527959494, is hereby appointed as the substitute Arbitrator to adjudicate upon the disputes between the parties. His mandate shall be in accordance with the provisions of the Act, 1996 from the date of his appointment.

19. The parties are at liberty to raise their respective objections before the Arbitrator.

20. The fees of the learned Arbitrator would be fixed in accordance with the Schedule-IV of the Act, 1996 or as consented by the parties.

21. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.

22. Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.

23. Furthermore, the mandate of the substituted Arbitrator shall be of one year from the date he enters reference.

24. Accordingly, the present petition is disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 14, 2024
S.Sharma