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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 411/2024, I.A. 35169/2024, I.A. 35645/2024

M/S PERNOD RICARD INDIA PVT LTDPetitioner

Through: Mr Suhail Dutt, Sr. Adv. with Mr Diljeet Titus, Mr Rajat Kamal, Mr Sankalp Goswami, Mr Karan Khanuja, Ms Aprajita Tygi, Ms Raj Shree Jaiswal and Mr Aseem Atwal, Advs.

versus

M/S INDOSPIRIT DISTRIBUTION LIMITED & ORS.

.....Respondents

Through: Mr Srijan Sinha, Mr Himanshu Chaubey, Mr Siddharth Garg, Mr Nishesh Gupta, Mr Srajan Yadav and Mr Gourang Dubey, Advs. for R-1, R-2, R-3 and R-5.

Mr Dhruv Gupta, Mr Anubhav Garg and Mr Indhirajith, Advs. for R-2, R-3 and R-5.

Mr Aditya Ganju, Ms Shambhavi Mishra, Ms Honeyshya Raj and Ms Pallavi Shalli, Advs. for R-4 and I.A. 35645/2024.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

09.08.2024

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1. This is a petition under Sections 11(5) and 11(12)(b) of the Arbitration and Conciliation Act, 1996 ("the Act") seeking, *inter alia*, appointment of an Arbitrator for adjudicating the disputes between the parties arising out of their business arrangement under the Surety Bond dated 17.05.2022 and Letter dated 16.05.2022 containing arbitration agreements.

2. The brief facts of the case are that the petitioner, M/s. Pernod Ricard India Pvt. Ltd., is a subsidiary of the French alcoholic beverages company



Pernod Ricard SA and a company incorporated under the laws of India.

3. Respondent No.1 had formally requested the petitioner to supply their goods on credit basis by granting a credit limit and undertook to make payments on an '*ongoing basis*' and '*before the expiry of the credit period to be granted*' against each supply of the said goods/products by the petitioner.

4. In pursuance of the Letter dated 16.05.2022, as a continuing and irrevocable guarantee to pay the outstanding dues qua the goods supplied by petitioner, a Surety Bond dated 17.05.2022 of INR 80,00,00,000/- was executed by the respondent No. 2 in favor of the petitioner.

5. The Letter dated 16.05.2022 and the Surety Bond dated 17.05.2022 both contained arbitration clauses at Clause 9 and Clause 4 respectively.

6. Since there were disputes between the parties, the petitioner invoked arbitration *vide* Legal Notice dated 20.10.2023. Thereafter, the petitioner filed the present petition.

7. As the facts are almost identical, the learned counsels for the respondents seek to rely on the replies filed in ARB.P. 399/2024. The arguments and my reasoning are identical, and hence the order in ARB.P. 399/2024 be referred in this regard.

8. I.A. 35169/2024 has been filed by respondent No. 4 seeking deletion from array of parties. I.A. 35645/2024 has been filed by respondent Nos. 2, 3 and 5 seeking deletion from array of parties.

9. As far as respondent No. 2, Mr. Sameer Mahandru is concerned, he has signed the Surety Bond dated 17.05.2022 as the "controlling person". The effect and role of a controlling person is not within the domain of this Court to determine while deciding the Section 11 petition. Hence, at this stage, respondent No. 2 cannot be deleted from the array of parties. He is at



liberty to raise this issue before the learned Arbitrator in accordance with law.

10. As far as respondent No. 3, Ms. Geetika Mahandru is concerned, she has signed the Letter dated 16.05.2022. It is stated that respondent No. 3 is a Director of respondent No. 1, M/s Indospirit Distribution Limited, and has only signed as a Director and not in her personal capacity.

11. A perusal of another Letter dated 21.11.2022 addressed to the petitioner and signed by respondent No. 1 shows that respondent No. 3 has given 5 cheques totaling to Rs. 80 crores as a “Guarantor”. Hence, in a Section 11 petition to say that respondent No. 3 only signed the letter as a Director will be premature. Hence, at this stage, respondent No. 3 cannot be deleted from the array of parties. She is at liberty to raise this issue before the learned Arbitrator in accordance with law.

12. Respondent Nos. 4 is Ms. Ravish Bajaj and respondent No. 5 is Mr. Tarun Nijhawan who are both Directors of respondent No. 1. They have not signed the Surety Bond dated 17.05.2022 and have only signed the Letter dated 16.05.2022. A perusal of the arbitration clause shows that disputes between the licensee and guarantor and the supplier are to be referred to arbitration, and respondent Nos. 4 and 5 are neither the licensees nor the guarantors but have signed as the authorized representative of the licensee only. The licensee can only be a party to the arbitration proceedings.

13. For the said reasons, respondent Nos. 4 and 5 are deleted from the array of parties.

14. In view of my findings above and in view of my findings in ARB.P. 399/2024, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-



- i) Mr. Justice Rajiv Sahai Endlaw (Retd.) (Mob. No. 9717495002) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
 - iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - v) The parties shall approach the learned Arbitrator within two weeks from today.
15. The petition is allowed and disposed of in the aforesaid terms.
16. The observations are only for the purpose of deciding Section 11 petition and the Arbitrator will be free to decide the same in accordance with law uninfluenced by the order passed today.

JASMEET SINGH, J

AUGUST 9, 2024
sr/NG

[Click here to check corrigendum, if any](#)