



\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 512/2024**
VINAY BAREJA & ANR.

.....Petitioner

Through: Mr. Sharad Nagpal, Adv.

versus

EVERLONG BRANDS PVT. LTD.

.....Respondent

Through: Mr. Daneel Pancras, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

04.10.2024

%

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator.
2. The petitioner no.1 is the proprietor of 'M/s VB Sports' having brand name 'VIFITKIT' and petitioner No. 2 is proprietor of 'M/s KB Enterprises' having brand name 'Yogarise'
3. Pursuant to the Business Transfer Agreements dated 17.11.2021, both the businesses were transferred to the respondent.
4. Both the Business Transfer Agreements contained Arbitration clause being clause No. 9 which reads as under:

"9.1 All disputes and differences arising out of or in connection with any of the matters set out in this Agreement ("Dispute"), if not resolved by amicable settlement within 30 (thirty) days from the date of the Dispute having arisen, shall be finally and



conclusively determined by an arbitration by a sole arbitrator mutually appointed by the Parties, in accordance with the Arbitration and Conciliation Act, 1996, for the time being in force. In the event of failure to appoint, such sole arbitrator may be appointed by the court of competent jurisdiction.

9.2 The arbitrator shall reach and render a decision in writing with respect to the appropriate award to be rendered or remedy to be granted pursuant to the dispute.

9.3 To the extent practical decisions of the arbitrator shall be rendered no more than 90 (Ninety) days following commencement of proceedings with respect thereto.

9.4 The arbitration shall be conducted in English, and the seat of arbitration shall be Mumbai or Delhi.

9.5 The arbitrator shall be entitled to award costs of the arbitration.

9.6 The award shall be binding on the Parties subject to the Applicable Laws in force and the award shall be enforceable in any competent court of law.”

5. Since there were disputes between the parties, the petitioner vide legal notice dated 11.01.2024, requested the respondent to comply with its obligations under the Business Transfer Agreements and pay the outstanding dues.

6. Since the same was not paid, the petitioner invoked Arbitration vide legal notice dated 05.02.2024.

7. Mr. Pancras, learned counsel for the respondent has filed a reply and states that in the present case, under the Business Transfer Agreements, the



parties were to first attempt amicably settling the dispute, which was a condition precedent for invocation of the Arbitration. Since the same was not done, any purported invocation of arbitration would be rendered as premature, invalid, and illegal.

8. All other objections raised by the respondent are on facts, which only the learned Arbitrator can decide.

9. As regards the objection pertaining to attempt to amicable settlement is concerned, I am of the view that there is no hard and fast formula described for amicable settlement of dispute under clause 9.1 of the Business Transfer Agreement.

10. The petitioner *vide* legal notice dated 11.01.2024 informed the respondent of the dispute arisen between the parties and requested the respondent to comply with its obligations under the Business Transfer Agreements.

11. The reply to the legal notice of 11.01.2024 by the respondent was only issued on 16.02.2024, by when the petitioner had invoked Arbitration.

12. A perusal of the reply shows that the respondent has disputed the claims made by the petitioner and has not attempted to settle the matter in any way.

13. I am of the view that the notice dated 11.01.2204 can be construed as an attempt by the petitioner to resolve the disputes between the parties by amicable settlement and since the same was not responded to by the respondent within time, the petitioner was very much within its rights to assume that the respondent was no interested in an settling the matter.

14. In view of the facts stated by the petitioner, the petition is allowed and the following directions are issued:-



- i) Mr. T. Singhdev (Adv.) (Mob. No. 9999012345) 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').
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) 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.
- vi) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

OCTOBER 4, 2024/sp/dm

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