



\$~43

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 156/2024 & I.As.11200-01/2024**
RADHAKRISHNA FOODLAND PRIVATE LIMITED Petitioner
Through: Mr. Arunadhri Iyer, Adv.
versus

ARISHI EXPORTS PRIVATE LIMITED Respondent
Through: Mr. Kamal Mehta, Mr. Bhavya
Sethi and Mr. Shiven Khurana,
Advocates (M- 98113 89644)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **16.05.2024**

1. This hearing has been done through hybrid mode.

I.A. 11201/2024 (for delay)

2. This is an application seeking condonation of delay of 13 days in re-filing the petition. For the reasons stated therein, the delay in re-filing is condoned. Application is disposed of.

I.A. 11200/2024 (for exemption)

3. Allowed, subject to all just exceptions. Application is disposed of.

O.M.P.(I) (COMM.) 156/2024

4. The present petition has been filed on behalf of the Petitioner-Radhakrishna Foodland Pvt. Ltd. under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter*, '1996 Act') seeking reliefs in respect of the property No. 8, situated in Block 'C', Phase II, Noida, District, Gautambudh Nagar, Uttar Pradesh, admeasuring 4,000 sq. mtrs. (*hereinafter*, 'subject property').

5. It is stated that disputes in the present case arise out of a



Memorandum of Understanding dated 30th March, 2024 (*hereinafter, 'MoU'*) and a Transfer Deed dated 24th July, 2023 (*hereinafter, 'Transfer Deed'*) entered into between the parties herein. As per the Petitioner, in accordance with the MoU and the Transfer Deed, the subject property was transferred to the Respondent for a total consideration of Rs. 11 Crores.

6. It is the case of the Petitioner that no GST was paid at the time of execution of the Transfer Deed. As per the Petitioner, the GST liability is to the tune of Rs.2.04 Crores and it is to be paid on behalf of the Respondent. The interest would also be liable to be paid on the same.

7. It is submitted by Id. Counsel for the Petitioner that instead of praying for interim relief, his client is willing that a Sole Arbitrator be appointed in terms of the arbitration clause present in the Transfer Deed. He further submits that the present petition under Section 9 of the 1996 Act can be converted into a petition under Section 17 of the 1996 Act, in furtherance of which, the Petitioner shall seek interim relief before the Id. Arbitrator. The liability is denied by the Respondent.

8. On behalf of the Respondent, Mr. Mehta, Id. Counsel submits that Clause 29 of the Transfer Deed is clear to the extent that in the event of a dispute, the District Court of Gautambudh Nagar and the High Court of Allahabad shall have jurisdiction. This is challenged by the Id. Counsel for the Petitioner who submits that the arbitration clause is clear to the effect that the seat of arbitration is in Delhi.

9. Heard. The two clauses of the agreement is set out below:

“29. THAT incase of any dispute legal jurisdiction shall be district Court of Gautambudh Nagar and Hon'ble High Court of Allahabad.

xxx xxx xxx



*38. Every dispute, difference, or question which may at any time arise between the parties hereto or any person claiming under them, touching or arising out of or in respect of this agreement (deed) or any of the subject matter thereof shall be referred to the Sole Arbitrator for Arbitration in accordance with the Indian Arbitration Act 1996 and **place of Arbitration shall be Delhi.***

10. A perusal of the above two Clauses would show that insofar as arbitration is concerned, there is no doubt that the seat as also the venue of arbitration would be in Delhi. If parties have to litigate on any other issues which are not covered by the arbitration clause, then the jurisdictional Court clause would be triggered i.e., Clause 29.

11. Insofar as arbitration is concerned, this Court has the jurisdiction to appoint an arbitrator. Considering the nature of the disputes, **Ms. Rashmi Chopra, Advocate (M: 9810311218)** is appointed as the Sole Arbitrator in this matter to adjudicate the disputes.

12. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre (‘DIAC’). The fee of the Arbitrator shall be paid in terms of the 4th Schedule as amended by DIAC Rules, 2023.

13. List before the DIAC on 28th May, 2024.

14. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.

15. The petition is disposed of. All pending applications are also disposed of.

16. This petition under Section 9 of the Arbitration and Conciliation Act, 1996 shall now be treated as a petition under Section 17 of the Arbitration and Conciliation Act, 1996. Electronic record of this petition be transmitted



to the DIAC. All objections of the parties are left open.

MAY 16, 2024

Rahul/rks

PRATHIBA M. SINGH, J.