



\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (T) (COMM.) 98/2023, I.As. 20748/2023 & 20749/2023**

M/S AYUSH TREXIM PVT. LTD. Petitioner
Through: Mr. Anil Sharma, Mr. Arpit Sharma, Adv.
(M. 9811006742)
versus

SANTOSH PRAKASH TYAGI & ANR. Respondents
Through: Appearance not given.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **19.01.2024**

1. This hearing has been done through hybrid mode.

I.A.20749/2023 (for delay)

2. This is an application filed by the Petitioner seeking condonation of 26 days delay in refiling the Petition. For the reasons stated in the application, the delay of 26 days in filing the petition is condoned. Application is disposed of.

O.M.P.(T)(COMM.) 98/2023 & I.A.20748/2023 (stay)

3. The present petition under Sections 14 & 15 of the Arbitration and Conciliation Act, 1996 has been filed seeking termination of the proceedings before the Sole Arbitrator, who was appointed by the Respondent Nos.1 & 2.

4. A partnership deed was executed between M/s. Ayush Trexim Pvt. Ltd., Mr. Santosh Prakash and Mrs. Neerja Tyagi on 26th February, 2021. As per the said partnership deed, the firm Possible Hospitality Services was to be formed for the purpose of opening, running & maintaining a specialized Rajasthani Thali



Restaurant in Ambience Mall, Vasant Kunj under the brand name '*Ghoomar Traditional Thali Restaurant*'. Contributions were to be made by all the three parties and profit and loss were to be distributed in terms of the agreement *i.e.*, 47.5% each for M/s. Ayush Trexim Pvt. Ltd., Mr. Santosh Prakash and 5% for Mrs. Neerja Tyagi. However, disputes have arisen in respect of the business of the partnership firm.

5. According to the Petitioner, there was some incorrect transfer of money, which was made by the Respondents. Vide notice dated 16th December, 2022, the Petitioner asked the Respondents not to transfer any money in any account without consent of the Petitioner and provide bank statements, GST, ITR and TDS credential along with sale and purchase invoices and expenditure details. It is controverted by the Respondents. It is clear that amicable resolution was explored through notice dated 24th February, 2023. The Petitioner thereafter invoked the arbitration clause on 24th June, 2023. In reply dated 24th July, 2023, the Respondent Nos. 1&2 stated that they have appointed Mr. Mohan Kumar as the sole Arbitrator. Thereafter, there were various allegations and counter allegations.

6. The Petitioner was under an apprehension that in terms of the arbitration clause, the Respondents had appointed the Arbitrator, which is in contravention to the terms of the arbitration clause 24 of the agreement which states that the sole arbitrator shall be appointed by the consent of all parties jointly and in accordance with the Arbitration and Conciliation Act, 1996. Hence, the present petition has been filed for termination of the said arbitration proceeding and appointment of fresh Arbitrator by this Court.



7. Notice in this matter was issued on 18th October, 2023. The arbitration proceedings, before Mr. Mohan Kumar, Sole Arbitrator, were stayed on the said date. Reply is stated to have been filed by the Respondents. It is, however, not on record. Copy of the same has been perused by the Court.

8. Ld. Counsel for the Respondents submits that only a consent letter was obtained from the said Arbitrator and no proceedings have commenced. Hence, the proceedings before the Arbitrator be terminated and a fresh Arbitrator be appointed by this Court. The Petitioner and the Respondents submit that there are claims and counter claims against each other.

9. Heard ld. Counsel for the parties. The arbitration clause in the present case reads as under:

“24. All disputes and questions whatsoever which shall either during the partnership or afterwards arise between the partners or their respective representatives or between any partners or partner and the representatives of any other partner touching this deed or the construction or application thereof or any clause or thing herein contained or any account, valuation or division of assets, debts or liabilities to be made hereunder or as to any act, deed or omission of any partner or as to any other matter in any way relating to the partnership business or the affairs thereof or the rights, duties or liabilities of any person under this deed shall be referred to a single arbitrator to be appointed only by the consent of all parties to this deed jointly and in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof for the time being in force.”



10. As per the above clause, the arbitrator was to be appointed by the parties jointly. This Court is of the opinion that the unilateral appointment of an arbitrator is contrary to the procedure prescribed in the arbitration clause. In ***Perkins Eastman Architects DPC and Anr. v. HSCC (India) Ltd., 2019 SCC OnLine Sc 1517***, it was observed that appointment of a sole arbitrator unilaterally by a party involved in the dispute gives that party an element of exclusivity in determining the course of dispute resolution and therefore both the parties nominating the arbitrators, would counter-balance the power with other party. The relevant extract of the judgement is set out below:

“21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was concerned with the issue, “whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator” The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where



only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72]”

11. Ld. Counsel for the Respondent submits that his client has no objection if a sole arbitrator is appointed by the Court. Sole Arbitrator is liable to be appointed. Parties are agreeable to a lawyer to be appointed as an Arbitrator in the matter. Accordingly, **Mr. Rishabh Dhir, Advocate (8280079686)** is appointed as the Sole Arbitrator in this matter to adjudicate upon the disputes between the parties that have arisen out of the partnership deed dated 26th February, 2021. The arbitration proceedings shall be conducted under the aegis of DIAC and as per the Rules of DIAC.

12. Ld. counsel for the Respondents submits that the Respondents would still like to explore mediation in the matter. Accordingly, the first date of hearing before the Sole Arbitrator is fixed on 8th April, 2024.

13. In the meantime, if the parties wish to attempt to resolve the disputes, they are free to do so and report the same to the Sole Arbitrator. Reply handed over may be taken on record and be tagged with the file.

14. Petition is disposed of along with all pending applications.



15. The copy of the order be emailed to Secretary, DIAC on email id-
delhiarbitrationcentre@gmail.com.

PRATHIBA M. SINGH, J.

JANUARY 19, 2024/dk/ks