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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 1361/2023**

NIKHIL SACHAR

..... Petitioner

Through: Mr. Siddharth Sachar, Adv.

versus

FRIENDS HOSPITALITY & ORS.

..... Respondents

Through: Mr. Praveen Kumar Singh, Ms.
Shradha Maheshwari, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

12.02.2024

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1. This is a petition seeking appointment of the Sole arbitrator in terms of Clause 12 of the Reconstituted Partnership Deed dated 01.05.2023. The arbitration clause reads as under:

“12. DISPUTE RESOLUTION

This Deed shall be governed by the laws of India as applicable from time to time.

The jurisdiction under which this Deed shall be of the Courts of Delhi alone. The Parties hereby consent to the jurisdiction of Delhi Courts and waive any objection to such jurisdiction.

That in case of dispute in any of the clauses of this deed or accounts of the firms or any other matter relating to the firm, the matter shall not be resorted to the court of law, but the partners will settle the same by mutual consent, failing which the same shall be referred to an arbitrator under the provisions of The Arbitration and Conciliation Act, 1996 and any amendments from time to time. All disputes and questions whatsoever which shall either during the subsistence of the



partnership or afterwards arise between the partners or between one or more of them and the legal representatives of other or others or between their respective legal representatives 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 other matter in anyway relating to the partnership business or the affairs thereof on the rights, duties or liabilities of any person under this deed shall be referred to arbitration in accordance with and subject to the provisions of The Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force.

The proceedings of arbitration shall be in English language. The arbitral award shall be substantiated in writing. All costs of the arbitration will be borne by the unsuccessful Party, unless the arbitrator(s) orders otherwise. The Parties hereto renounce the right to claim for and receive indirect or consequential damages, including those arising from loss of time, loss of profits and / or loss of production. The award of the arbitrator shall be final and binding on the Parties and the Parties shall take all actions necessary or appropriate to cause such award to be given full effect and enforcement.”

2. Since there were disputes between the parties, the petitioner sent a legal notice dated 07.11.2023. Para 13 of which reads as under:

“13. We for and on behalf of Our Client call upon the Noticees to amicably settle the dispute and make the payment of the above-stated Total Amount of Rs. 7,55,250/- (Rupees Seven Lakhs Fifty-Five Thousand Two Hundred and Fifty Only) within 15 days of receipt of this notice, failing which, please treat this notice to be a notice for invocation of arbitration and we call upon you to appoint a Sole Arbitrator within a period of thirty days from the date of receipt of this notice. In the event Noticee fails to act upon this notice, Our Client shall be constrained to take such steps under law as may be required.”

3. The said notice was duly replied by the respondents stating that there



is no profit in the partnership deed. The partnership is incurring losses and therefore the petitioner being a partner is liable to make good the losses.

4. In this view of the matter, the present petition has been filed.

5. Mr. Singh, learned counsel for the respondents who appears on advance notice, admits the arbitration clause and raises a preliminary objection that the legal notice dated 07.11.2023 is more of a recovery notice and is not a notice for invoking arbitration clause.

6. I am unable to agree with the said objection. A perusal of para 13 clearly shows that the petitioner has quantified the amount which is due and recoverable and has very categorically stated that in case the same is disputed, the notice should be treated as an arbitration notice.

7. In this view of the matter, the notice invoking arbitration, according to me, is in accordance with law.

8. Section 11(4) of the Arbitration and Conciliation Act, 1996 does not prescribe a particular format under which a notice needs to be issued.

9. For the said reason, the petition is allowed and disposed of with the following directions:

- i) Ms. Sagrika Wadhwa, Advocate (Mob. No. 8527531588) 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 on 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.

JASMEET SINGH, J

FEBRUARY 12, 2024/DM

Click here to check corrigendum, if any