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

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**Date of Decision: 21.11.2024**

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**ARB.P. 1533/2024****MOTHER BOON FOODS PVT. LTD. THROUGH ITS  
MANAGING DIRECTOR**

.....Petitioner

**Through: Mr. Lalit Bhardwaj and Mr. Jatin  
Anand Dwivedi, Advs.****versus****M/S. BIMBO BAKERIES INDIA PRIVATE LIMITED EARLIER  
KNOWN AS M/S. READY ROTI INDIA PVT. LTD. ....Respondent****Through: Mr. Shrey Chathly, Adv.****CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition under Section 11 r/w Section 15 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks constitution of an arbitral tribunal to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in context of a Manufacturing Agreement dated 25.07.2012 (hereinafter '*the agreement*'), initially entered into with an entity namely Mindscape One Marketing Pvt. Ltd., which was later amalgamated with the respondent i.e. M/s. Bimbo Bakeries India Pvt. Ltd (erstwhile M/s. Ready Roti India Pvt. Ltd.).
3. Under the said agreement, the petitioner was required to set up a manufacturing plant, as well as manufacture and package 'baked bread' as per the specifications and standards provided by the respondent from time to



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time.

4. Clause 17.2 of the said agreement contains the arbitration agreement and reads as under:-

*“17.2 Arbitration*

*17.2.1 Any and all claims, disputes or controversies involving the parties and arising out of or in connection with or relating to this agreement, Or the execution, interpretation, validity, performance, breach or termination hereof, including, without limitation, the provisions of this clause (individually, a dispute) that is not settled to the satisfaction of the parties under Article 17.1 above shall be finally resolved by arbitration in accordance with the rules of Indian Arbitration and Conciliation Act, 1996 and any amendment of the same effected and enacted from time to time.*

*17.2.2 For the purpose of such arbitration, the Company shall appoint the Sole Arbitrator.*

*17.2.3 The place of arbitration shall be Delhi.”*

5. A termination notice was issued by the respondent as far back as 14.03.2014, terminating the agreement between the parties. Disputes between the parties have arisen on account of the alleged outstanding monetary entitlement of the petitioner under the said agreement, for which the petitioner sent a legal notice dated 08.04.2014.

6. Thereafter, without responding to the said legal notice, an arbitral tribunal comprising of three members was unilaterally constituted by the respondent on 12.04.2014 which consequently rendered an *ex-parte* award dated 15.07.2014. A section 11 petition, filed by the petitioner, seeking appointment of a sole arbitrator for adjudicating the disputes between the parties, was dismissed as withdrawn *vide* order dated 22.08.2014 on account of the award dated 15.07.2014 having been passed by the arbitral tribunal constituted by the respondent.

7. Thereafter, a section 34 petition bearing OMP(COMM) 136/2017 was filed by the petitioner assailing the said arbitral award. *Vide* order dated



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22.08.2014 of the Court in the section 34 petition, the said arbitral award was set aside and thereafter, the petitioner filed a second section 11 petition before the District Court, South West, Delhi bearing OMP(COMM) 47/2019.

8. During the pendency of the section 11 petition, the respondent unilaterally appointed Mr. A.K. Raghava as the sole arbitrator to adjudicate the disputes between the parties. Consequently, the said section 11 petition was withdrawn by the petitioner on account of the petitioner being agreeable to the appointment of Mr. A.K. Raghava as the sole arbitrator.

9. Thereafter, the petitioner issued various communications *vide* letters dated 10.11.2021, 25.01.2022 and 28.02.2022, calling upon the respondent as well as Mr. A.K. Raghava to for initiation of the arbitral proceedings. However, *vide* a reply dated 14.05.2022, the respondent objected to the said request on account of the mandate of Mr. A.K. Raghava having been expired under Section 29A(4) A&C Act. Thereafter, there were no further communications between the parties.

10. As the parties were unable to mutually agree on the appointment of a sole arbitrator, the petitioner filed a third section 11 petition bearing ARB.P No. 176/2023 before this Court seeking appointment of a sole arbitrator. However, *vide* order dated 14.02.2023, the said section 11 petition was dismissed for being premature since the same was filed while the mandate of the previously appointed sole arbitrator, i.e. Mr. A.K. Raghava, was still continuing.

11. Thereafter, by a letter dated 12.05.2023 sent by Mr. A.K. Raghava, it was stated that the arbitrator had withdrawn from the arbitral proceedings as of 14.05.2022, and that a letter communicating the same had been sent to the



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respondent, however, the respondent had refused to receive the said letter.

12. Consequently, a fresh communication dated 06.06.2023 was sent by the petitioner calling upon the respondent to appoint a sole arbitrator to adjudicate the disputes between the parties. However, the said communication remained unresponded to by the respondent.

13. Consequently, the petitioner filed another section 11 petition bearing Arb.P.750/2023. However, the said petition was also dismissed *vide* order dated 03.07.2024 on account of being premature with liberty being granted to the petitioner to file afresh, after sending an appropriate notice to the respondent.

14. Pursuant to the aforesaid liberty granted, a communication dated 11.07.2024 was issued by the petitioner, calling upon the respondent to appoint an alternate arbitrator in place of Mr. A.K. Raghava, for adjudicating the disputes between the parties.

15. As no reply was received to the said communication and the parties were unable to mutually agree on the appointment of an alternate sole arbitrator, the present petition has been filed.

16. Notice was issued by the Court in the present petition on 01.10.2024.

17. Learned counsel for the respondent does not dispute the existence of the arbitration agreement and accedes to the appointment of a sole arbitrator to adjudicate the disputes between the parties.

18. In the circumstances, there is no impediment to appointing an independent Sole Arbitrator to adjudicate the disputes between the parties as prayed for, and as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd* (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Ltd*, (2017) 8 SCC 377,



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***Bharat Broadband Network Limited v. United Telecoms Limited.***, 2019 SCC OnLine SC 547 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re.***, 2023 SCC OnLine SC 1666 and ***SBI General Insurance Co. Ltd. v. Krish Spinning*** 2024 SCC OnLine 1754.

19. Accordingly, Ms. Sangeeta Bharti, Advocate (Mob. No.: +91 9811112863) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

20. It is agreed by the parties that the arbitration shall be conducted under the rules and aegis of the Delhi International Arbitration Centre (DIAC), and the payment of arbitrator's fees and costs, shall also be governed by the said rules. It is directed accordingly.

21. The respondent shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

22. It is made clear that the observations in this order shall not be construed as an expression of opinion of this Court on the merits of the matter.

23. All rights and contentions of the parties are left open to be considered by the learned Sole Arbitrator.

24. The present petitions stand disposed of in the above terms.

**SACHIN DATTA, J**

**NOVEMBER 21, 2024/dn**