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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision: 13.11.2024**+ **ARB.P. 1662/2024****WADHWA GENERAL STORE & ANR.**

.....Petitioners

Through: Mr. Shantanu Singh, Ms. Pragya
Singh, Mr. Akshay Singh, Advs.

versus

M/S HINDUSTAN UNILEVER LTD

.....Respondent

Through: Mr. Prantar Basu Choudhury, Adv.

SACHIN DATTA, J (Oral)**IA No.42498/2024**

1. Allowed, subject to all just exceptions.
2. The application stand disposed of.

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3. Issue notice. Learned counsel, as aforesaid, accepts notice on behalf of the respondent.
4. The present petition under Section 11(6) Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') has been filed seeking appointment of a Sole Arbitrator for resolving the disputes between the parties.
5. The disputes between the parties have arisen in context of a 'Redistribution and Stockist Agreement' dated 01.04.2021. The petitioner no.1 is a sole proprietorship firm ('Redistribution Stockist'/RS) managed by petitioner no.2 (sole proprietor). The petitioner entered into the said agreement with the respondent-Hindustan Unilever Ltd., which is engaged in manufacturing, marketing and sale of consumer and healthcare products, for the purpose of distributing said goods.



6. Clause 21 of the redistribution stockist agreement containing the dispute resolution clause is as follows:-

"21. GRIEVANCE REDRESSAL & DISPUTE RESOLUTION

21.1 The Parties hereto agree and undertake that any dispute or disagreement arising out of or in connection with or relating to this Agreement Including any question regarding its existence, validity or termination shall hereinafter be referred to as a "Dispute" and must be resolved pursuant to this Clause 21;

Provided that any dispute or disagreement arising out of or in connection with either Party's exercise of its right of termination under Clause 19.1 shall be excluded from the applicability of this Clause.

Resolution Process:

21.2 Either Party is entitled to raise a Dispute by notifying the other in writing of the same along with all relevant details. The RS and the Company must attempt to resolve any Dispute mutually amongst themselves by personal discussion between the Parties and in any event through the mandatory procedure prescribed in this Clause 21.

21.3 In the event if the Dispute is not resolved as stated above, for a period of more than two months from the notice specified in Clause 21.1 above, the said Dispute, during the subsistence of this Agreement, shall be referred in writing to the RS Ombudsman, who shall be selected by the RS from a list of 3 (three) names provided by the Company to the RS. It is clarified that no former or present employee or agent or party with whom the Company has pecuniary relationship will be eligible to be appointed as Ombudsman.

21.4 Proceedings by the Ombudsman may be held physically or through videoconferencing or teleconferencing, as may be mutually agreed by the Parties hereto. Proceedings before the Ombudsman shall be strictly confidential. The rules governing the proceedings before the Ombudsman will be determined by the Ombudsman and the Ombudsman has the powers to rule on its own jurisdiction. Any settlement agreement signed between the Parties pursuant to proceedings before the Ombudsman shall be final and binding on the Parties.

'21.5 In the event, the Ombudsman cannot resolve the Dispute within 2 (two) months from reference, such Dispute shall be referred to and finally resolved by arbitration in accordance with the (Indian) Arbitration and Conciliation Act, 1996 and all amendments or modifications thereto or re-enactments thereof. The Parties agree that the arbitral tribunal shall comprise of a sole arbitrator to be selected by the RS within 30 (thirty) days of a list of 3 (three) probable arbitrators being notified to the RS in writing by the Company. In the event of the RS failing to appoint an arbitrator within 7 (seven) days of receiving the list of probable arbitrators, the arbitral tribunal will comprise of three



arbitrators, of which 1 (one) shall be appointed by the Company and 1 (one) by the RS, and the 2 (two) arbitrators so appointed shall appoint the third and presiding arbitrator within 14 (fourteen) days of their appointment. In the event the Parties fail to constitute an arbitral tribunal or the two arbitrators so appointed fail to appoint the presiding arbitrator, the arbitral tribunal will be constituted by approaching the court of competent jurisdiction under section 11 of the (Indian) Arbitration and Conciliation Act, 1996. The seat of the arbitration shall be Delhi and the language of arbitration shall be English. The arbitral tribunal shall provide reasons for its award. The decision of the arbitrator shall be final and binding on the Parties.

21.6 The sole arbitrator/ arbitral tribunal will make best efforts to pass an award within 4 (four) months from the date of the commencement of the arbitration.”

7. A demand notice dated 30.09.2021 was issued by the respondent under Section 25 of the Payment & Settlement Systems Act, 2007. *Vide* the said notice, the respondent demanded a sum of Rs. 23,98,832.85/- from the petitioner as outstanding dues under the aforesaid agreement. In response, a reply dated 04.10.2021 was sent by the petitioner wherein the petitioner asserted its own entitlements against the respondent.

8. Proceedings under Section 138 NI Act against the petitioner were also initiated by the respondent before the Metropolitan Magistrate, 23rd Court Esplanade, Mumbai. Despite the parties reaching a settlement as regards the aforesaid proceedings *vide* the settlement agreement dated 16.05.2024, parties were unable to resolve all their disputes, including those raised by the petitioner *vide* emails dated 04.10.2021 and 20.10.2021.

9. Consequently, the petitioner had filed a petition bearing ARB.P No. 1184/2024 seeking appointment of a sole arbitrator, however, since the said petition was filed without serving a notice under Section 21 of the A&C Act to the respondent, the same was dismissed as withdrawn *vide* order dated 05.08.2024, with liberty to the petitioner to file afresh.



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10. Thereafter, a notice invoking arbitration dated 08.08.2024 was issued by the petitioner. Although the same was responded to by the respondent on 06.09.2024, the parties could not mutually agree upon constitution of an arbitral tribunal. Consequently, the present petition has come to be filed.

11. It is now well settled that the appointment procedure of the kind contemplated under Clause 21 of the Agreement between the parties, is not a valid appointment procedure in terms of the legal position laid down by the Supreme Court in *Central Organisation for Railway Electrification v. M/s. ECI SPIC SMO MCML (JV) A Joint Venture Company* 2024 SCC OnLine SC 3219. Consequently, it is incumbent on this Court to constitute an independent arbitral tribunal.

12. Learned counsel for the respondent, while refuting the contentions of the petitioner on the merits of the dispute between the parties, accedes to appointment of a Sole Arbitrator to comprehensively adjudicate the disputes between the parties.

13. Accordingly, as jointly prayed, Ms. Jyoti Mendiratta, Advocate (Mob. No.: +91 9811136141) is appointed as the sole arbitrator to adjudicate the disputes between the parties.

14. It is agreed between the parties that arbitration shall be held under the aegis of and as per the rules of Delhi International Arbitration Centre (DIAC). It is directed accordingly.

15. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosures as required under Section 12 of the A&C Act.

16. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator



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on their merits, in accordance with law.

17. The present petition stands disposed of.

SACHIN DATTA, J

NOVEMBER 13, 2024*/uk,dn*

Signature Not Verified

Digitally Signed By: ROHIT
KUMAR PATEL
Signing Date: 22.11.2024
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