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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

Arb.O.P.(Com.Div.)No.348 of 2024

JB Fashions

Rep. by Jagadeesan Baskaran,
43/M S/o. Baskaran Jeyaraj,
64/1B, 1st Floor,
Pattu Arcade, Bypass Road,
Madurai – 625 010.

... Petitioner

VS.

Xurious Beauty Fashions Private Limited,
Rep. by its Managing Director – Sunil Adusumilli
Cenotaph Road,
Teynampet,
Chennai.

... Respondent

PRAYER: Arbitration Original Petition filed under Sections 11(5) of the Arbitration and Conciliation Act, 1996, to appoint a suitable person as the Sole Arbitrator to adjudicate the disputes between the petitioner and the respondent.

For Petitioner : Mr.Adarsh Mohandas

For Respondent : Mr.S.Lakshmi Narayanan



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ORDER

This matter is listed under the caption 'for being mentioned' today at the instance of the learned counsel for the Petitioner.

2. The learned counsel for the petitioner as well as the respondents are present and they were also heard. The learned counsel for the petitioner would seek for correction of the address of the respondent in the cause title and also Arbitration Original Petition filed under Section 11(5) instead of 11(6). According to him, the petitioner has mentioned two addresses of the petitioner, one at Madurai and one at Chennai. However in the copy of the order issued, the petitioner's Chennai address has been inadvertently, shown as the respondent's address. The learned counsel for the respondent has no objections for correcting the said mistake. The address of the petitioner and the respondent and Section 11(5) may be corrected accordingly.

3. The learned counsel for the petitioner would further state that at paragraph 4 and 6 of the order dated 31.01.2025, it has been mentioned that the respondent has already initiated Section 11 Petition before the High Court of Telangana. It is the contention of the learned counsel for the petitioner that though there is no such mention in the counter filed by the



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respondent in the O.P, an oral statement was made at the time of arguments, on 28.01.2025, he would submit that no evidence or proof has been shown by the petitioner in support of the filing of the Section 11 Petition. He therefore seeks for the order being clarified.

4. Even today, when the learned counsel for the respondent was confronted about the said issue of whether the respondent has already filed a Section 11 Petition, the learned counsel could not assert as to whether the O.P has already been filed and he only seeks for further time to get this clarified from the respondent.

5. In view of the above, I deem it fit to modify paragraph No.4 of the order dated 31.01.2025, Para 4 lines 1- 6 will read as follows:

“4. The learned counsel for the respondent has filed a counter affidavit stating that the Original Petition is not maintainable before this Court and the respondent has already issued a Section 21 notice on 15.06.2024. The learned counsel would further submit that Section 11 Petition would be shortly filed and brought up before the High Court of Telangana and”

in the place of the paragraph No.4, the learned counsel for the respondent will be short brought up before the High Court of Telangana....”



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6. In paragraph No.6, third line will read as.. “ Firstly, Section 21 notice was not issued by the petitioner but by the respondent, Secondly, when the respondent sent a notice... disputing the very Arbitration Agreement and the respondent. Therefore, having taken such a stand, it is not now open to the petitioner to turn around and file a Section 11 Petition as if the petitioner is ready to submit to the jurisdiction of the Arbitral Tribunal” instead of Firstly, Section 21 notice was not issued by the petitioner but by the respondent, which has been admittedly followed up with a Section 11 Petition before the High Court of Telangana. Secondly, disputing the very franchise Agreement and the respondent. Therefore, having taken such a stand, it is not now open to the petitioner to turn around after the respondent has initiated Section 11 Proceedings before the High Court of Telangana, to file a Section 11 Petition as if the petitioner is ready to submit to the jurisdiction of the Arbitral Tribunal”

7. Except for the aforesaid modifications, order dated 31.01.2025, remains unaltered in all other respects.

17.02.2025

rkp

Note: Registry is directed to issue a fresh copy of the order after incorporating necessary corrections.



Issue order copy 18.02.2025.

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P.B.BALAJI, J.,
rkp

Arb.O.P.(Com.Div.)No.348 of 2024

17.02.2025



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.01.2025

Pronounced on : 31.01.2025

CORAM

THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

Arb.O.P.(Com.Div.)No.348 of 2024

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PRAYER: Arbitration Original Petition filed under Sections 11(6) of the Arbitration and Conciliation Act, 1996, to appoint a suitable person as the Sole Arbitrator to adjudicate the disputes between the petitioner and the respondent.

For Petitioner : Mr.Adarsh Mohandas



For Respondent : Mr.S.Lakshmi Narayanan

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ORDER

This Original Petition has been filed seeking appointment of a Sole Arbitrator under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes between the parties.

2.The petitioner carries on business of running Salons / Parlours in the city of Chennai and Madurai, by operating franchises of popular multinational brands and caters to a wide array of clientele. One such franchisee taken by the petitioner was French Luxury brand – Dessange Paris from the respondent vide Sub Franchise Agreement dated 11.02.2023.

3.According to the petitioner, the petitioner set up its first hairdressing salon of Dessange Paris as a sub franchisee of the respondent at Teynampet, Chennai on 14.05.2023. According to the petitioner, though the respondent promised to equip the employees of the petitioner, failed to give proper training. Several other issues were also raised towards purchase of equipments and ultimately, the parties were at loggerheads and the petitioner, invoking the arbitration clause 12.2 in the Sub Franchise



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Agreement, has filed the present original petition.

4.The learned counsel for the respondent has filed a counter affidavit stating that the original petition is not maintainable before this Court and already Section 11 petition has been invoked by the respondent, after issuing a Section 21 notice on 15.06.2024. The learned counsel for the respondent would submit that the said Section 11 petition will be shortly brought up before the High Court of Telangana and the present petition is not maintainable since the petitioner has not invoked the arbitration clause and sent any Section 21 notice. However, according to the petitioner, only the High Court of Hyderabad, State of Telangana has jurisdiction over the arbitral dispute and hence, sought for dismissal of the original petition.

5.In reply, the learned counsel for the petitioner placed reliance on the decision of this Court in *Arb.O.P.No.670 & 671 of 202022* dated 08.08.2023, where this Court relying on the decision of the Hon'ble Supreme Court in *BBR (India) Private Limited Vs. S.P.Singla Constructions Private Limited* reported in (2023) 1 SCC 693, held that when deciding an application under Section 9 of the Arbitration and Conciliation Act where



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the seat of arbitration is not fixed, the Court where a part of cause of action has arisen, will have the jurisdiction to decide an application under Section 9 of the Arbitration and Conciliation Act. The said finding of this Court was on the basis that the agreement was executed in the State of Tamil Nadu and payments were made towards investments from Tamil Nadu and that this Court entertained the Section 11 application. It is also relevant to note that in the said case, Section 21 notice had been issued by the petitioner therein.

6. Bearing in mind the ratio laid down by this Court, following the dictum of the Hon'ble Supreme Court in the instant case, there are two distinguishing features. Firstly, Section 21 notice was not issued by the petitioner but by the respondent, which has been admittedly followed up with a Section 11 petition before the High Court of Telangana. Secondly, when the respondent sent a notice invoking the arbitration clause on 15.06.2024, the petitioner sent a reply on 03.07.2024, disputing the very franchise agreement between the parties and took a specific stand that there is no valid arbitration agreement that existed between the petitioner and the respondent. Therefore, having taken such a stand, it is not now open to the petitioner to turn around after the respondent has initiated Section 11



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proceedings before the High Court of Telangana, to file a Section 11 petition as if the petitioner is ready to submit to the jurisdiction of the Arbitral Tribunal. Such a conduct of the respondent is far from bonafide. Therefore, I do not find any merit in the claims of the petitioner seeking appointment of a Sole Arbitrator.

7. In view of the above, this Arbitration Original Petition is dismissed.

31.01.2025

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Index : Yes / No

Internet : Yes / No



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P.B.BALAJI, J.,
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31.01.2025



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