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

+ **ARB.P. 444/2025**

DEL MONTE FOODS PRIVATE LIMITEDPetitioner

Through: **Mr. Niloy Dasgupta, Advocate**

versus

AMIT AGARWALRespondent

Through: **Mr. Kundan Roy, Advocate (through VC)**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **09.04.2025**

1. The present petition has been filed by the Petitioner under Section 11(5) of the Arbitration and Conciliation Act, 1996 ('Act of 1996') seeking appointment of Sole Arbitrator in terms of Clause '15' of the Stockiest Agreement entered into between the parties on 23.08.2017 ('Stockiest Agreement').
2. It is stated that the Petitioner has been maintaining a statement of account in the name of Respondent's proprietorship firm namely 'Bhaskar Enterprises' since the parties started business with each other.
3. It is stated that as per the said account an amount of Rs. 4,19,364/- is outstanding as on 30.01.2020 against the Respondent. It is stated that a written letter dated 02.12.2022 was addressed by the Petitioner to the Respondent to pay the outstanding amount. It is stated that said letter was responded to by the Respondent making false averments. It is stated that further the Petitioner served a demand notice dated 28.02.2023.



4. It is stated that in the meanwhile the Respondent filed a civil suit for recovery at District Courts at Moradabad, Uttar Pradesh i.e., Suit No. 47 of 2023. It is stated that in the said suit the Petitioner herein filed an application under Sections 5 and 8 of the Act of 1996. It is stated that the said Court has dismissed the suit vide order dated 20.01.2024, directing the parties to initiate arbitration in terms of Clause 15 of the Stockiest Agreement within 90 days.

5. It is stated that thereafter, the Petitioner invoked arbitration by sending notice dated 16.04.2024, which notice was not received by Respondent even though the address was correct. It is stated that the said notice was served through email/WhatsApp as well on 10.05.2024.

6. It is stated that thereafter, the Petitioner issued fresh notice invoking arbitration vide notice dated 05.11.2024. It is stated that the said notice was replied to by the Respondent vide reply dated 21.11.2024, refusing proposal for appointment of arbitrator on the ground of limitation.

7. In reply, learned counsel for the Respondent states that he relies upon paragraph '36' of his reply on merits as well as paragraph '4' of his preliminary submissions in the said reply for opposing this petition.

Decision

8. This Court has considered the submissions of the parties and perused the records.

9. Upon perusal of the Clause 15 of the Stockiest Agreement, this Court is satisfied that there exists the valid arbitration clause in terms of the Clause 15 of the Stockiest agreement, which clause has been duly invoked by the Petitioner by issuing notice dated 05.11.2024.

10. The said Clause mentions that the place of Arbitration shall be New Delhi, which reads as under:



“15. Governing Law and Arbitration

This agreement shall be governed by and construed and interpreted in accordance with laws of India.

a) **All dispute(s)/difference(s)/disagreement(s) of any nature whatsoever connected with this agreement or any matter related thereto including the question of supply of goods, the question of payment of dues, the question of claims of either party and any other questions touching upon this agreement, which cannot be resolved amicably shall be referred to settlement to a Sole Arbitral Tribunal constituted under The Arbitration & Conciliation Act, 1996 or any modification thereof or any re-enactment thereof.** The Sole Arbitral Tribunal shall be appointed only by FieldFresh Foods Private Limited and its constitution shall not be challenged only because it is appointed by FieldFresh. Arbitration shall be conducted under the provisions of The Arbitration & Conciliation Act, 1996, or any modification thereof or any reenactment thereof. The Arbitrator shall be entitled to extend time for making the award, settle his/her fees, stand to determine the party(ies) liable to make payment thereof. **The place of Arbitration shall be New Delhi** or at such other place as the Arbitrator determines. The language of the arbitration proceedings shall be English. The award(s) in such arbitration shall be final and binding upon the parties.

b) **This appointment of the Stockiest and agreement is made and shall be deemed to have made in Delhi/New Delhi** and that any dispute arising out of this agreement or in respect of any matter or thing herein contained and any claim or proceeding by either party against the other shall be adjudicated and **decided by the Arbitral Tribunal in accordance with the clause 15(b) above and for this purpose the Court at Delhi alone shall have jurisdiction.**”

(Emphasis supplied)

11. In the present petition the value of claims has been assessed by the Petitioner at Rs. 4.20 Lakhs approximately. As per the reply of the Respondent filed to this petition, the claim of the Respondent in the civil suit filed in District Court of Moradabad was Rs. 6.6 lakhs approximately.

12. The Respondent itself relies upon order dated 20.01.2024 passed by the Civil Court and therefore its objection reference to arbitration has no merits. The Respondent's claims raised in the suit can also be decided in arbitration. In the facts of this case, the Petitioner issued notice dated 16.04.2024 invoking arbitration and therefore prima facie the Petitioner had taken steps



within 90 days. Notwithstanding, the effect of Petitioner not taking steps for appointment of Arbitrator within 90 days is relevant only to the decide the issue of limitation for the maintainability of the claims, which objection is always open to the Respondent to raise before the Arbitrator. However, there is no other legal consequence of the Petitioner failing to invoke arbitration within 90 days as directed vide order dated 20.01.2024.

13. In view of the above, a Sole Arbitrator is appointed for adjudication of the disputes, leaving it open for the parties to raise their contentions *qua* their respective claims and/or counterclaims before the Arbitrator. Mr. Neeraj Yadav, Advocate (D-1363/2007) (Mob. No.: 9899426760 E-mail: neerajyadavlaw@gmail.com) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. In addition, the following directions are passed:

14. The arbitration will be held under the aegis of the Delhi International Arbitration Centre ('DIAC'). The remuneration of the Sole Arbitrator shall be in terms of Schedule IV of the Act of 1990.

15. The Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act of 1996 before entering into the reference.

16. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims or counter claims, 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 Sole arbitrator.

17. The Petitioner is directed to file its Statement of Claim within four (4) weeks. The Respondent will file its Statement of Defence and counterclaims within a period of four (4) weeks, thereafter.

18. List for preliminary hearing to be presided over by the Sole Arbitrator



on 15.05.2025 at 10:30 A.M.

19. With the aforesaid direction, the petition stands disposed of.

20. The registry is directed to send a copy of this order to Secretary, DIAC and the Sole Arbitrator.

21. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

APRIL 9, 2025/mt/sk

[Click here to check corrigendum, if any](#)