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

+ **ARB.P. 1571/2024**

**ACCELERATE PRODUCTX VENTURES PRIVATE
LIMITED**

.....Petitioner

Through: Mr. Aman Kumar Thakur, Advocate.

versus

**VIPIN TRIPATHI PROPRIETOR OF V.T.
ENTERPRISES**

.....Respondent

Through: None.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

ORDER

% **16.07.2025**

1. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. Notice was issued to the Respondent on 07.10.2024, returnable on 10.12.2024 on which date fresh notice was issued, returnable on 03.03.2025. Notice could not be issued for want of process fee and fresh notice was issued through all permissible modes, including *dasti*, for 08.05.2025. Order dated 08.05.2025 records that as per affidavit of service filed by the Petitioner, Respondent was unserved through Speed Post, while service through ordinary mode was awaited, *albeit* Petitioner was served through electronic mode. Fresh notice was issued directing the Petitioner to furnish fresh address of the Respondent and matter was adjourned for today. As per



affidavit of service filed by the Petitioner, Respondent is served through Speed Post on 05.06.2025. Tracking report is appended to the affidavit. It is further stated in the affidavit that notice was sent through e-mail mentioned in the Franchise Agreement executed between the parties and e-mail has not bounced back.

3. None appears on behalf of the Respondent despite service. It appears that Respondent is not interested in contesting the present petition and is accordingly set *ex parte*.

4. Petitioner's case is that a Franchise Agreement was executed on 18.07.2023 between the Petitioner and the Respondent for setting up, operating and managing convenience retail store under the brand name 'THE NEW SHOP'. As per Clause 2.3(ii) of the Agreement, Respondent was liable to pay to the Petitioner each month a Minimum Guarantee of Rs. 20,000/- or 3% of net sales, whichever was higher. Being a *bona fide* franchisor, Petitioner in due execution of the terms of the Agreement apprised the Respondent of the default in payment vide notice dated 13.12.2023 but payments were not made. After expiration of the period in the cure notice, Petitioner terminated the Agreement by a formal notice on 27.12.2023 and called upon the Respondent to adhere to the obligations under the Agreement and as per Clause 17 to immediately cease operations of the store and remove the signages and fixtures as also surrender all marketing material, licences, confidential information etc., and pay the outstanding dues.

5. It is further averred that Respondent failed to make the payments and continued to use the Petitioner's trademark in the name and style of 'THE NEW SHOP' thereby infringing the trademark and cheating and defrauding



the innocent customers as also violating the non-compete clause. Since the Agreement contains an arbitration clause, Petitioner sent an invocation notice under Section 21 of 1996 Act on 09.02.2024, which was duly received by the Respondent on 15.02.2024. However, even on expiry of 30 days, Respondent neither appointed an Arbitrator nor fulfilled the obligations under the Franchise Agreement.

6. As noted above despite service, Respondent has failed to appear and contest the present petition. The Franchise Agreement contains an arbitration clause envisaging reference of any dispute, claim or difference arising out of the said Agreement to arbitration. Seat and venue of arbitration as per Clause 22 is New Delhi. In the absence of a contest by the Respondent, the arbitration agreement between the parties is undisputed. In a petition under Section 11(6) of 1996 Act, the Referral Court is required to examine the existence of arbitration agreement between the parties. The Agreement in question contains an arbitration agreement providing for disputes to be adjudicated by a Sole Arbitrator to be appointed mutually by the parties. On receipt of the invocation notice dated 09.02.2024, Respondent has failed to take steps to agree to an Arbitrator and accordingly Petitioner has approached this Court. In light of the judgment of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***, I find no impediment in appointment of a Sole Arbitrator as envisaged in Clause 22 of the Agreement.

7. Accordingly, Coordinator, Delhi International Arbitration Centre ('DIAC') is requested to take steps for appointment of the Sole Arbitrator. Arbitral proceedings will be held under the aegis of DIAC and fee of the Arbitrator shall be fixed as per fee schedule under DIAC (Administrative



Cost & Arbitrators' Fees) Rules 2018.

8. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.
9. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.
10. Petition is allowed and disposed of in the aforesaid terms.

JYOTI SINGH, J

JULY 16, 2025/Shivam