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

+ **ARB.P. 1711/2024**

M/S FINE TASTE FOODS PVT LTD

.....Petitioner

Through: Mr. Jitender Chaudhary, Ms. Shilpa Chohan, Ms. Pankhuri Nehra, Advs.

versus

PEPSICO INDIA HOLDINGS PVT LTD

.....Respondent

Through: Ms. Anjali Anshayi, Ms. Ridhima Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

15.04.2025

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties arising out of the Contract Agreement dated 06.04.2023.
2. The arbitration clause is contained as clause No. 23 and the same reads as under:

“23. GOVERNING LAW AND ARBITRATION

23.1 This Agreement, including matters relating to its validity, construction, performance and enforcement, is governed by the laws of India without regard to its choice or conflict of law rules.

23.2 Any dispute or difference between the Parties as to the



*effect, interpretation or application of this Agreement or as to their rights, duties or liabilities thereunder, or as to any act, matter or thing arising out of, in connection with or related to this Agreement (“**Dispute**”) is to be resolved by arbitration in accordance with the arbitration rules of the Mumbai Centre for International Arbitration.*

23.3 The seat of arbitration is Delhi. The language of arbitration will be English.

23.4 The arbitral tribunal will consist of a sole arbitrator, appointed by mutual agreement of the parties.

23.5 Subject to Clause 23.3 above, the courts of Delhi have exclusive jurisdiction in the event of any dispute between the Parties.”

3. The facts are that the petitioner was approached by the respondent for a co-packaging arrangement of its ‘Kurkure Puffcorn line’ . In this regard, the respondent issued a Letter Of Intent (“LOI”) on 22.10.2022, which was accepted by the petitioner on 01.11.2022.

4. Since the respondent defaulted their obligation in terms of the Contract Agreement dated 06.04.2023, the petitioner invoked arbitration vide legal notice dated 03.07.2024, which was duly responded to by the respondents on 13.08.2024.

5. Thereafter, the present petition has been filed.

6. Ms. Anshayi, learned counsel appears for the respondent and states that the arbitration clause contemplates that Mumbai Centre for International Arbitration (MCIA) rules shall be applicable for arbitration



and it is the MCIA which should appoint the arbitrator. She further draws my attention to the Rule Nos. 7.2, 7.3 and 8.2 of MCIA which reads as under:

“7.2 If the parties have agreed that any arbitrator is to be appointed by one or more of the parties, or by any third person including the arbitrators already appointed, that agreement shall be treated as an agreement to nominate an arbitrator under these Rules.

7.3 The Council alone shall be empowered to appoint arbitrators. In all cases, the arbitrators nominated by the parties, or by any third person, shall be subject to appointment by the Council in its discretion.

....

8.2 Subject to Rule 8.3, if within 21 days after receipt by the Registrar of the Request for Arbitration, or in the manner otherwise agreed by the parties, the parties have not reached an agreement on the nomination of a sole arbitrator, or if at any time either party so requests, the Council shall make the appointment as soon as practicable.”

7. Mr. Chaudhary, learned counsel for the petitioner has no objection to the same.

8. With consent of parties, it is directed that the MCIA will appoint an arbitrator to adjudicate the disputes between the parties arising out of the Contract Agreement dated 06.04.2023 within 4 weeks from the date of receipt of this Order. The following further conditions are issued:

I. All the rights and contentions of the parties, including as to



the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims, legal submissions and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

- II. The MCIA is requested to keep in mind that the proceedings are to be held in New Delhi, since the seat of the arbitration is at New Delhi and the parties should not be required to spend substantial amounts towards the travelling and boarding expenses.
9. With these directions, the petition is disposed of.

JASMEET SINGH, J

APRIL 15, 2025/sp

Click here to check corrigendum, if any