HC-KAR
NC: 2026:KHC:64823
CMP No. 188 of 2023
CNR: KAHC010246652023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

CIVIL MISC. PETITION NO.188 OF 2023

BETWEEN:

1. SRI. MR. VIVEKANANDA PAI
S/O LATE SRI JANARADHAN PAI
AGED ABOUT 76 YEARS
PROPRIETOR OF M/S TOONZ RETAIL
FRANCHISEE, R/AT NANDADEEPA
2-1-104B4, GUNDIBAIL, KUNJIBETTU
P.O. UDUPI -576102.

...PETITIONER

(BY SRI. RAJASHEKAR S, ADV.,)

AND:

1. M/S. TOONZ INDIA PVT LTD.,
[DELETED AS PER ORDER DTD:07.04.2025]

2. TOONZ RETAIL INDIA PVT LTD.,
[DELETED AS PER ORDER DTD:07.04.2025]

3. A CRYSTAL ENTERPRISE
[DELETED AS PER ORDER DTD:07.04.2025].

4. M/S. AVIRAL CROP SCIENCE PVT LTD.,
HAVING ITS OFFICE AT
320/02, FLOWER GARDEN
K H RANGANATHA COLONY
OPP. BHEL, MYSORE ROAD
BANGALORE
BANGALORE, KA-560026.

ALSO AT:
M/S. AVIRAL CROP SCIENCE PVT LTD

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NO.B-95, WAZIPUR INDUSTIRAL AREA
WAZIPUR, DELHI-110052.

5. QUALITY KIDS ZONE PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
PLOT NO.102, 2ND FLOOR
ABAODE LUMBINI AVENUE
GACHIBOWLI, HYDERABAD-5600032
REP. BY ITS AUTHORIZED SIGNATORY
MR. THARUN.

6. ANKUR AGGARWAL
DIRECTOR AVIRAL CROP SCIENCE PVT. LTD.,
A-88, PHASE-1, ASHOK VIHAR
NEW DELHI-110052.

7. SUMEET SOOD
DIRECTOR AVIRAL CROP SCIENCE PVT LTD
E-54, ANAND NIKETAN, SOUTH WEST DELHI
NEW DELHI-110052.

8. BHASKAR RAO NADIPALLY
DIRECTOR, QUALITY KIDS ZONE PRIVATE LIMITED
H.NO.5-11-677/1, PREM NAGAR COLONY
NAIM NAGAR, HANAMKONDA, WARANGAL
TELANGANA-506001.

9. ANTHAM REDDY AMITESH
DIRECTOR, QUALITY KIDS ZONE PRIVATE LIMITED
H.NO.2-70/2, SHANKARAPATANAM MANDAL
LINGAPUR, KARIMNAGAR
TELANGANA-505468.

10. SAI THARUN NADIPALLY
H.NO.5-11-677/1, PREM NAGAR COLONY
NAIM NAGAR, HANAMKONDA
WARANGAL, TELANGANA-506001.

…RESPONDENTS

(BY SMT. KAVERI THIMMAIAH, ADV., FOR
SRI. M.B. GAGAN GANAPATHY, ADV., FOR R4 & R6

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V/O/DTD:0704.2025, R1 TO R3 ARE DELETED FROM THE ARRAY OF PARTIES
R7 SERVED UNREPRESENTED
V/O/DTD:07.04.2025 SERVICE OF NOTICE TO R5 R8, R9 IS H/S /O/D 28.07.2026 NOTICE TO R10 IS H/S)

THIS CIVIL MISC. PETITION IS FILED UNDER SECTION 11 (5) OF THE ARBITRATION AND CONCILIATION ACT, 1996, FOR THE APPOINTMENT OF SOLE ARBITRATOR, PRAYING TO APPOINT AN ARBITRATOR TO ADJUDICATE THE DISPUTE BETWEEN THE PARTIES AND ALLOW THE SAID ARBITRATOR TO ENTER UPON THE REFERENCE AND ADJUDICATE THE DISPUTE THE DIFFERENCES BETWEEN THE PARTIES ARISING OUT OF THE AGREEMENT DATED 04/02/2011 AND FULL AND FINAL SETTLEMENT AGREEMENT DATED 25/11/2020 VIDE ANNEXURE-A AND E & ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL ORDER

1. This petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (for short, "the Act"), seeking the appointment of a Sole Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the Franchise Agreement dated 04.02.2011 (Annexure-A) and the Full and Final Settlement Agreement dated 25.11.2020 (Annexure-E).

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2. The brief facts of the case are that respondent Nos.1 and 2 are companies engaged in the business of retailing children's merchandise under the brand name "Toonz". Respondent Nos.1 and 2 represented to the petitioner that they were engaged in the business of marketing their products through various channels. Based on the said representation, the petitioner entered into a Franchise Agreement dated 04.02.2011 with respondent Nos.1 and 2, as per Annexure-A. Pursuant thereto, the petitioner paid a sum of Rs.20,00,000/- towards a refundable security deposit, the receipt of which was duly acknowledged by respondent Nos.1 and 2. Thereafter, respondent No.2, namely, M/s. Toonz Retail India Pvt. Ltd., changed its name to M/s. Aviral Crop Science Pvt. Ltd., which is arrayed as respondent No.4. Subsequently, respondent No.4 entered into a Business Transfer Agreement with respondent No.5 and the same was communicated to the petitioner on 05.06.2020. Consequent thereto, the petitioner entered into a Full and

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Final Settlement Agreement dated 25.11.2020 with respondent No.5, as per Annexure-E. However, the amount due to the petitioner was not settled in terms of the said agreement. Hence, the petitioner invoked the arbitration clause contained in the Franchise Agreement dated 04.02.2011 by issuing a notice dated 07.03.2023 under Section 21 of the Act, as per Annexure-H. The Arbitration clause reads as under:

> *14) ARBITRATION*
>
> *That in case of any dispute or difference with respect to or in reference or relating to this agreement or interpretation of any of the terms of the agreement the same shall be resolved through arbitration in accordance with the provisions of Arbitration and Conciliation Act 1996 and / or its subsequent statutory modifications. All such proceedings shall be subject to jurisdiction of courts at Bangalore.*

3. The said notice was duly served on the respondents. Respondent Nos.1, 4, 6 and 7 submitted their reply to the said notice. Being dissatisfied with the response received, the petitioner has approached this Court by filing the

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present petition seeking the appointment of a Sole Arbitrator. Respondent No.5, though served with notice, has remained unrepresented.

4. Learned counsel appearing for respondent Nos.4 and 6 submitted that respondent No.4 had entered into a Business Transfer Agreement with respondent No.5, pursuant to which all liabilities were transferred to respondent No.5. Therefore, if any amount is due to the petitioner, the same has to be recovered from respondent No.5. It was contended that consequent upon the transfer of business, no further business transactions subsisted between respondent Nos.4 and 5. She further submitted that the petitioner and respondent No.5 had entered into a Full and Final Settlement Agreement, under which respondent No.5 had undertaken to discharge the entire outstanding liability towards the petitioner. In furtherance of the said undertaking, respondent No.5 had issued six post-dated cheques in favour of the petitioner. Therefore,

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the dispute, if any, is exclusively between the petitioner and respondent No.5, and hence respondent No.4 is not a necessary party to these proceedings. In support of her contentions, learned counsel placed reliance on the judgment of the Hon'ble Apex Court in *Hindustan Petroleum Corporation Ltd. v. BCL Secure Premises Pvt. Ltd.*, rendered in Civil Appeal No.14647/2025 reported in (2026) 3 SCC 711.

5. The specific case of the petitioner is that he had entered into a Franchise Agreement with respondent Nos.1 and 2 and had deposited a sum of Rs.20,00,000/- towards a refundable security deposit. It is further contended that respondent No.2 subsequently changed its name to M/s. Aviral Crop Science Pvt. Ltd., which is arrayed as respondent No.4 to the petition. Though the petitioner entered into a Full and Final Settlement Agreement dated 25.11.2020 with respondent No.5, respondent No.4 has been impleaded as a party to the present proceedings in

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view of the Business Transfer Agreement entered into between respondent No.4 and respondent No.5.

6. Be that as it may, the specific contention of respondent No.4 is that, in view of the Business Transfer Agreement entered into between respondent No.4 and respondent No.5, respondent No.4 is no longer liable to discharge any liability towards the petitioner and that the petitioner is required to pursue his claim soley against respondent No.5 in terms of the Full and Final Settlement Agreement entered into between them. However, these are matters relating to the respective rights and liabilities of the parties, which cannot be adjudicated by this Court while exercising jurisdiction under Section 11 of the Act. The parties are at liberty to raise all such contentions before the learned Arbitrator, who shall consider and adjudicate the same in accordance with law.

7. In the facts and circumstances of the present case, it is not in dispute that the petitioner had entered into a

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Franchise Agreement with respondent Nos.1 and 2, which subsequently changed its name to M/s.Aviral Crop Science Pvt. Ltd., arrayed as respondent No.4. The subsequent agreements between respondent Nos.4 and 5 and the petitioner do not, by themselves, establish that respondent No.4 stands discharged of its obligations under the original Franchise Agreement. The question of their respective liabilities is left open for consideration by the learned Arbitrator. Therefore, prima facie, respondent No.4 appears to be a necessary party to the present proceedings. In view of the peculiar facts and circumstances of the case, the judgment relied upon by learned counsel for respondent No.4 is not applicable to the facts of the present case.

8. Having regard to the existence of the arbitration clause contained in the Franchise Agreement, which provides for resolution of disputes arising between the parties through arbitration, and the fact that the petitioner

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has duly invoked the said arbitration clause by issuing a notice under Section 21 of the Act, this Court is of the considered opinion that the disputes between the parties are required to be referred to arbitration by appointing a Sole Arbitrator.

9. Accordingly, the following:

ORDER

a) Civil Miscellaneous Petition is **allowed**.

b) Sri.S.R.Somashekara, retired District Judge, is appointed as the Sole Arbitrator in the present case to arbitrate the disputes between the parties at the Arbitration and Conciliation Centre (Domestic & International), Bengaluru, as per the Rules governing the said Arbitration Centre.

c) All the claims and contentions of the parties are left open.

d) Registry is directed to communicate this order via e-mail to the Arbitration and Conciliation Centre (Domestic & International), Khanija

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Bhavan, Bengaluru, and also to the learned Arbitrator.

e) Registry is directed to return all the original documents produced by any of the parties after obtaining Photostat copies of the same.

f) Parties are directed to appear before the Director, Arbitration and Conciliation Centre, Bengaluru, on 05.01.2027 at 11:30 a.m.

g) All pending I.As., if any, are disposed of.

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(H.T. NARENDRA PRASAD)
JUDGE

DM
List No.: 1 Sl No.: 22