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

% *Date of Judgment: 08<sup>th</sup> March, 2021*

+ **O.M.P.(T) 5/2020 & I.A. 7405/2020**

ALOK NARANG

..... Petitioner

Through: Mr Atul Kharbanda and Mr  
Kapil Sethi, Advocates.

versus

KAYAAN MARKETING & DISTRIBUTION  
PVT. LTD.

..... Respondent

Through: Mr Manish Malhotra, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'A&C Act'), 1996, *inter alia*, praying that the appointment of the Sole Arbitrator appointed by the respondent be declared void. The petitioner also impugns the order dated 29.07.2020 passed by the learned Arbitrator rejecting the petitioners application challenging his appointment.

2. The parties had entered into an agreement on 31.01.2020 ( 'the Agreement') for operating of a restaurant and bar, namely "CAFF ME", in the basement and ground floor of the building bearing no.B1/1 and B1/2, Block, Community Centre, Janakpuri. The petitioner claims that

the restaurant could not be operated successfully in view of the lockdown imposed on account of the outbreak of COVID-19.

3. The respondent sent an email dated 02.06.2020 alleging non-performance on the part of the petitioner. Thereafter, by a letter dated 05.06.2020, the respondent terminated the Agreement dated 31.01.2020.

4. Admittedly, disputes have arisen between the parties in connection with the said Agreement dated 31.01.2020.

5. By a notice dated 04.07.2020, the respondent proceeded to appoint a former District Judge as the Sole Arbitrator to adjudicate the disputes between the parties.

6. The petitioner objected to such appointment and suggested the name of another former Additional District Judge to be appointed as an Arbitrator to adjudicate the disputes between the parties. However, it appears that this was not acceptable to the respondent. In the meanwhile, on 07.07.2020, the Arbitrator appointed by the respondent accepted his appointment and on the next date (that is, on 08.07.2020) issued a notice to the parties to appear before him on 22.07.2020 for further proceedings.

7. The petitioner requested the learned Arbitrator to withdraw from the arbitral proceedings in view of the challenge to his appointment. However, the said request was rejected by an order dated 29.07.2020. The learned Arbitrator referred to the decision of the Supreme Court in

***Central Organisation For Railway Electrification v. ECI-SPIC-SMO-MCML(JV): Civil Appeal Nos.9486-9487/2019 decided on 17.12.2019***

and held that the petitioner could not be allowed to raise objection to the appointment of the Sole Arbitrator as the same was in terms of the procedure as contemplated under the arbitration clause.

8. The learned counsel for the petitioner referred to the decisions of the Supreme Court in “***TRF Limited v. Energo Engineering Projects Limited: (2017) 8 SCC 377***” and “***Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd.: 2019 SCC OnLine SC 1517*** and contended that in view of the said decisions, it is no longer open for the respondent to unilaterally appoint an Arbitrator. He further submitted that in view of the decision of the Supreme Court in ***HRD Corporation (Marcus Oil and Chemical Division) v. GAIL (India) Limited: Civil Appeal No. 11126 of 2017 decided on 31.08.2017***, it was open for the petitioner to challenge the appointment of an Arbitrator under Section 12(5) of the A&C Act by filing a petition under Section 14 of the A&C Act. He also referred to the decision of the Supreme Court in ***Bharat Broadband Network Limited v. United Telecoms Limited: (2019) 5 SCC 755*** as well as the decision of this Court in ***Proddatur Cable TV Digi Services v. Citi Cable Network Limited: (2020) 267 DLT 51*** in support of his contention that the unilateral appointment of an Arbitrator by the respondent was impermissible.

9. The learned counsel for the respondent countered the aforesaid submissions and submitted that this issue is squarely covered by the decision of the Supreme Court in ***Central Organisation For Railway***

***Electrification*** (*supra*) and the Arbitrator was required to be appointed in terms of the procedure as agreed upon between the parties under the arbitration clause. He also referred to the decision of the Supreme Court in ***State Trading Corporation of India Ltd. v. Jindal Steel and Power Ltd. & Ors.***: Civil Appeal No(s).2747/2020 decided on 14.07.2019.

10. The contentions advanced on behalf of the petitioner are merited. In terms of the decision of the Supreme Court in ***TRF Limited*** (*supra*), any person who is ineligible to appoint as an Arbitrator in terms of Section 12(5) of the A&C Act read with the Seventh Schedule to the Act would also be ineligible to appoint an Arbitrator. Following the rationale of the said decision, the Supreme Court in its later decision in ***Perkins Eastman Architects DPC & Anr.*** (*supra*) held that even if the Arbitration Clause did not contemplate the appointment of any employee as an Arbitrator but merely empowered him to appoint an Arbitrator, the same would be impermissible. The Supreme Court held that if a person is ineligible to act as an Arbitrator, it would follow that he was also ineligible appoint an Arbitrator.

11. Following the aforesaid decisions and the decision of the Supreme Court in ***Bharat Broadband Network Limited*** (*supra*), this Court held in ***Proddatur Cable TV Digi Services*** (*supra*) that unilateral appointment of an Arbitrator by one party was not permissible.

12. The contention that the controversy involved is covered by the decision of the Supreme Court in ***Central Organisation For Railway Electrification*** (*supra*) is misplaced. It would be relevant to refer to the

Arbitration Clause involved in this case. The same is reproduced below:

“Reference of Dispute

17.1 Notwithstanding anything contained in any other law for the time being in force, if any dispute, differences or disagreements arising out of or in connection with or in relation to this Agreement including its interpretation, sic. (illegible), or termination of any nature such dispute shall be referred to arbitration of a sole Arbitrator to be nominated and decided by Second Party and provisions of the Arbitration Act shall apply to all such arbitration.”

13. The arbitration clause, in the context of which the decision in ***Central Organisation For Railway Electrification*** (*supra*) was rendered is materially different. In the said case, the Arbitration Clause provided for the Appointing Authority to forward a panel of Arbitrators to the other party with the option to the said party to select an Arbitrator. Thus the said decision is inapplicable to the facts of this case.

14. In addition, it is also relevant to mention that the decision of the Supreme Court in ***Central Organisation For Railway Electrification*** (*supra*) has been referred to a Larger Bench by the Supreme Court in its later decision in ***Union of India v. M/s. Tania Constructions Ltd.: SLP (C) No. 12670/2020***.

15. The decision of the Supreme Court in ***State Trading Corporation of India Ltd.*** (*supra*) relied upon by the learned counsel for the respondent has no application to the facts of the present case. The issues

involved in the said case is materially different.

16. In view of the above, this Court consider it apposite to allow the present petition. Accordingly, the mandate of the learned Arbitrator unilaterally appointed by the respondent is terminated.

17. This Court proposes to appoint Mr. Kuldeep Singh, Retired ADJ, Delhi (Mobile No.- 9868237722) as a Sole Arbitrator to adjudicate the disputes between the parties. The Arbitrator may give his consent and disclosure as required under Section 12(1) of the A&C Act before the next date of hearing.

18. List on 19.03.2021.

**MARCH 08.2021**  
**MK**

**VIBHU BAKHRU, J**

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