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IN THE HIGH COURT OF BOMBAY AT GOA
APPLN. FOR APPOINTMENT OF ARBITRATOR NO.10 OF 2024

AMITKUMAR SURESH DUBLAY REP. BY
HIS LAWFUL ATTORNEY RUPA
AMITKUMAR DUBLAY

... Applicant

VERSUS

NIKATTAM SOLUTION PVT. LTD REP. BY
ITS DIRECTOR AND PRINCIPAL OFFICER
SOMNATH RAUTRAY AND ANR.

...Respondents.

Ms. Shaizeen Shaikh, Advocate for the Applicant.

CORAM:

BHARAT P. DESHPANDE, J

DATED:

21st August 2024

P.C.:

1. Heard Ms. Shaikh, learned Counsel for the applicant. In spite of service of notice and producing affidavit of service on record none appeared for the respondents.
2. Applicant approached this Court under Section 11(6) of the Arbitration And Conciliation Act, 1996 praying for appointment of Arbitral Tribunal to decide the dispute between the parties.
3. An agreement was executed between the applicant and the respondent which is dated 21.3.2023 wherein there is clause of arbitration for the purpose of settlement of dispute.

4. Learned counsel for the applicant would submit that by invoking such clause notice was forwarded to the respondents dated 16.2.2024, however, there is no response from the respondents. On perusal of the agreement dated 21.3.2023 executed between the parties, it is clear that clause 29 refers to arbitration in case of any disputes between the parties.

5. Clause 29 in the said agreement dated 21.3.2023 reads thus:-

“1.This Agreement and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with Indian Substantive and Procedural law, applicable to Agreements made and to be performed entirely therein.

2. The Parties shall attempt in good faith to resolve any dispute, difference or claim arising out of or in relation to this Agreement through mutual discussion. In case it is not resolved within thirty (30) days from receipt of the written notice (setting out the dispute or claim) by the other party, the complaining party may issue a notice of reference, invoking settlement of such dispute through Arbitration.

3. All disputes between parties shall be subject to jurisdiction of the Courts as mutually decided place between parties.

4. Any and all disputes ("Disputes") arising out of or in relation to or in connection with this Agreement between the Parties or relating to the performance or non-performance of the rights and obligations set forth herein or the breach,

termination, invalidity or interpretation thereof shall be referred for arbitration at mutually decided place between parties in accordance with the terms of Indian Arbitration and Conciliation Act, 1996 or any amendments thereof. The language used in the arbitral proceedings shall be English. Arbitration shall be conducted by a sole arbitrator, who shall be appointed by the Franchisor only. The sole arbitrator shall be appointed as per the provisions of Arbitration and Conciliation Act, 1996. The arbitral award shall be in writing and shall be final and binding on each party and shall be enforceable in any court of competent jurisdiction. In respect of application/s made under the Arbitration and Conciliation Act, 1996, the Courts at mutually decided place between parties, shall have the jurisdiction to entertain such application, where both parties are free for selection of lawyers under the Courts of Gurgaon.”

6. The applicant who is shown as Franchisee/Second part in the agreement, issued notice of termination dated 29.7.2023 and therefore invoked arbitration clause by sending a notice to the respondents. Notice is dated 16.2.2024 by which the applicant called upon the respondents to agree upon the name of the Arbitral Tribunal and to refer the dispute for adjudication, in view of clause 29 of the agreement.

7. Though such notice was delivered to the respondents, there is no response. Thus it is clear that respondents are not willing to refer the dispute to the Arbitral Tribunal.

8. Even notice issued by this Court in the present application were served but not responded as the respondents failed to appear and contest the proceedings.

9. Since the dispute arose between the parties which is required to be decided as per clause 29 of the agreement and since both the parties agree that such dispute needs to be referred to the Arbitral Tribunal, parties were supposed to agree upon constitution of the Tribunal. Since there is no mutual consent given by the respondents, applicant had no other alternative but to approach this Court.

10. Accordingly, Arbitral Tribunal is required to be constituted for referring the dispute for adjudication.

11. Learned counsel for the applicant would submit that Mr P. V. Sawaikar, learned District Judge (Retired) could be appointed as Arbitral Tribunal. Such request could be accepted. Application is accordingly allowed.

12. Accordingly, Mr P. V. Sawaikar, learned District Judge (Retired) is appointed as sole Arbitrator to decide the dispute between the parties.

13. In these circumstances, the following order is passed :-

- a. Mr P. V. Sawaikar, learned District Judge(Retired), is appointed as the Sole Arbitrator to decide upon the disputes and differences between the Applicant and the Respondents.
- b. A copy of this order will be communicated to the learned Sole Arbitrator by the Advocate for the Applicant within a period of one week from today.
- c. The learned Sole Arbitrator is requested to forward his Statement of Disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the Advocate for the Applicant so as to enable him to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondents.
- d. The parties shall appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.
- e. Contact and communication particulars shall be provided

by both sides to the learned Sole Arbitrator within a period of one week from today. This information shall include a valid and functional email address as well as the mobile numbers of the respective Advocates.

- f. The parties have agreed that the Sole Arbitrator shall charge his fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee payable to Arbitrators) Rules, 2018. The parties have further agreed that all the arbitral costs and the fees of the Arbitrator will be borne by the Applicant and the Respondent equally and will be subject to the final Award that may be passed by the Tribunal.
- g. The parties immediately consent to a further extension of six months to complete the arbitration, should the learned Sole Arbitrator find it necessary.
- h. The parties have agreed that the seat of the arbitration will be at Panaji, Goa. However, the venue of the Arbitration shall be decided by the Sole Arbitrator taking into consideration convenience of the parties as well as his convenience.

14. In view of above, Application stands disposed of.

BHARAT P. DESHPANDE, J