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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 13th May, 2024*

+ **ARB.P. 336/2024**

AMANDEEP SINGH UBEROI Petitioner
Through: Mr. Aayush Agarwala, Ms. Bhumika
Sharma & Mr. Kunj Mehra,
Advocates.

versus

TRIPPING MR PINK PRIVATE LIMITED Respondent
Through: Ms. Surbhi Sharma & Ms. Dhanya
Airen, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

I.A. 5576/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

ARB.P.336/2024

3. The present Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner seeking appointment of a sole Arbitrator for adjudication of the disputes having arisen between the parties.
4. It is submitted in the petition that the petitioner was granted a franchise outlet of Burger Singh at Marine Drive, Raipur, Chhattisgarh *vide* Franchise Agreement dated 24.10.2022 by the respondent for the period of five years. However, the respondent illegally and arbitrarily terminated the



Franchise Agreement *vide* Letter dated 27.07.2023 without giving any prior notice to the petitioner to cure the defects as mandated by the Franchise Agreement.

5. The disputes arose between the parties due to such illegal termination. The petitioner *vide* Notice for Settlement of Disputes dated 22.09.2023 under Article 26 of the Franchise Agreement called upon the respondent for amicable resolution of disputes. The parties got engaged in the negotiations but despite multiple efforts, they could not arrive at a settlement. The petitioner thus invoked the Notice of Invocation dated 26.12.2023 under Clause 28 of the Franchise Agreement. The respondent despite Notice of Invocation unilaterally appointed a sole Arbitrator for adjudication of disputes *vide* Letter dated 29.01.2024.

6. It is asserted that this unilateral appointment of the Arbitrator is *de jure* ineligible and, therefore, the present petition has been filed on behalf of the petitioner for appointment of the sole Arbitrator.

7. **The present petition has been contested by the respondent which in its Reply** has submitted that the Notice of Invocation under Section 21 of the Act, 1996 is not in accordance with the law as it has been issued by one, Mr. Siddharth Sharma from Delayed Payment Consultants.

8. The respondent-Company has claimed that on 25.01.2024 and again on 26.01.2024, an e-mail was received from Mr. Siddharth Sharma from Delayed Payment Consultants, purportedly invoking Arbitration as per the Franchise Agreement, however, the said Notice was not considered to be valid for the simple reason that Mr. Siddharth Sharma is a third party and has no right to issue the Notice of Invocation.

9. It is, therefore, submitted that the Notice under Section 29 of the Act,



1996 is not valid as it has not been signed by the petitioner or his representative.

10. It is further contended that the Notice under Section 29 of the Act, 1996 is not a valid Notice and has to be deemed that no Notice of Invocation has been served whereby the present petition is not maintainable.

11. **Submissions heard.**

12. Learned counsel for the petitioner has relied upon the decision in the case of Parsoli Motors Works Pvt. Ltd. vs. BMW India Pvt. Ltd. and Another, 2023 SCC OnLine Del 79, wherein after relying on Prasar Bharti vs. Multi Channel (India) Ltd., 2005 Supp Arb LR 245, it was observed that the object of giving Notice of Invocation is essential to put the other party to Notice that there are disputes which the party intends to refer to the arbitration, with an intent to give an opportunity to the other party to resolve the disputes if possible, and or to agree to the arbitration in terms of the clause in their Agreement. So long as the essential requirements are made that the Notice under Section 21 of the Act, 1996, and information is conveyed in regard to the dispute and the intention to invoke arbitration, requirements of Section 21 of the Act, 1996 are sought to be complied with.

13. Learned counsel on behalf of the respondent has placed reliance on the decision in the case of Benarsi Krishna Committee and Others vs. Karmyogi Shelters Private Limited, (2012) 9 SCC 496, wherein it has been explained what amounts to “party to arbitration”. It was held that the expression ‘party’ indicates a person who is a party to the Arbitration Agreement. It was also observed held that the expression “party”, as defined in Section 2(h) of the 1996 Act, clearly indicates a person who is a party to an arbitration agreement. The said definition is not qualified in any



way so as to include the agent of the party to such agreement. Any reference, therefore, made in Section 31(5) and Section 34(2) of the 1996 Act can only mean the party himself and not his or her agent, or Advocate empowered to act on the basis of a *vakalatnama*.

14. **Submissions heard.**

15. Essentially, the objection taken on behalf of the respondent is that the Notice of Invocation dated 26.12.2023 cannot be held to be valid for the reason that it is given by Mr. Siddharth Sharma from Delayed Payment Consultants, who is neither a party to the Agreement nor is he in any way concerned with the petitioner and thus, any Notice given by him is not valid.

16. It is also contended that the Notice of Invocation does not give the details of the disputes intended to be referred to arbitration and is, therefore, not proper Notice of Invocation.

17. The petitioner has duly explained that the Delayed Payment Consultants had been engaged by the petitioner for resolution of his disputes with the respondent and had been duly authorised on behalf of the petitioner.

18. It is further submitted that the Notice of Termination dated 27.07.2023 had been duly replied on behalf of the petitioner by Mr. Siddharth Sharma, Further correspondence on behalf of the petition had also been carried out with Mr. Siddharth Sharma with the copy to the petitioner.

19. At no point of time, did the respondent take any objection about Mr. Siddharth Sharma being not a competent to represent the petitioner. Even in the reply to the Notice of Invocation, the respondent had suggested the appointment of a practising Advocate or a retired Judge to be appointed as an Arbitrator.

20. Mr. Siddharth Sharma, being a duly authorised representative of the



petitioner, was well within his right to engage with the respondent for settlement and other negotiations. The objection taken on behalf of the respondent is hyper technical and is not tenable.

21. The judgment in Benarsi Krishna Committee (supra) relied upon by the respondent is in the context of Section 34 of the Act, 1996 which specifically provides that the copy of the award can be handed over to the party. It is in that context, it has been observed that what party confined only to the person who is a signatory to the contract.

22. In the present case, the same interpretation does not apply for the simple reason that Section 21 of the Act, 1996 does not apply.

23. Section 21 of the Act, 1996 reads as under: -

“21. Commencement of arbitral proceedings. Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

24. From the bare reading of Section 21 of the Act, 1996, it is evident that it nowhere provides that the Notice of Invocation has to be given by a party. All it provides that a Notice of Invocation must be served on the respondent. Therefore, it cannot be said that the proper Notice of Invocation had not been served upon the respondent.

25. The second objection taken on behalf of the respondent is that the Notice of Invocation is deficient inasmuch as it does not define the scope of the disputes.

26. The object of Notice of Invocation had been explained in the case of Parsoli Motors Works Pvt. Ltd. (supra).

27. In the present case, the Notice of Termination dated 27.07.2023



detailed all the grounds of termination and also defined the scope of disputes *inter se* the parties. This document of 27.07.2023 became the basis for subsequent negotiations, settlement talks and eventually when this settlement did not work out, the Notice of Invocation dated 26.12.2023 was served on behalf of the petitioner to the respondent.

28. The petitioner may not have subsequently detailed the disputes which were sought to be taken up for arbitration but this letter of invocation was part of the Termination Notice and subsequent negotiations.

29. The ground on which the disputes had been raised was mentioned clearly by the respondent itself in the Notice of Termination.

30. Considering all the negotiations and the Notices collectively, the nature and the scope of dispute is well evident and within the knowledge of both the parties. The Notice of Invocation was in continuation of the Notice of Termination and, therefore, the fundamental requirements of Notice of Invocation, putting the parties to the notice about the scope of the disputes stand fully complied with. This objection taken on behalf of the respondent is nothing but a hyper technical objection which is without any basis.

31. In view of the above, without prejudice to the rights and contentions of the parties, the present petition is allowed and Mr. Anant Vijay Palli, Senior Advocate, Mobile No. 9810199102, is hereby appointed as the sole Arbitrator to adjudicate the disputes between the parties.

32. The parties are at liberty to raise their respective objections before the Arbitrator.

33. The fees of the learned Arbitrator would be fixed in accordance with the Fourth Schedule of the Act, 1996 or as consented by the parties.

34. This is subject to the Arbitrator making necessary disclosure as under



2024: DHC: 4127



Section 12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.

35. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre, Delhi High Court.

36. The parties are directed to contact the Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.

37. Accordingly, the present petition is disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 13, 2024
S.Sharma