

(2022) 01 DEL CK 0102

In the Delhi High Court

Case No : Arbitration Petition No. 1060 Of 2021

Kake Di Hatti

APPELLANT

Vs

Shree Foods And Ors

RESPONDENT

Date of Decision : 13-01-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9, 11, 12

Citation : (2022) 01 DEL CK 0102

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Parvinder Chauhan, Rajat Sang Sharma

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator to

adjudicate the disputes inter se the parties.

2. As per the averments made in petition, petitioner is a sole proprietorship concern and is a brand in food and hospitality sector having multiple chain

of restaurants. Pertinently, owing to its established goodwill and client base, respondents approached the petitioner seeking franchisee. After detailed

discussions, Franchisee Agreement dated 19.06.2019 was entered between the parties. It is also averred that the franchise business was commenced

from the outlet located at C-9/12, Ground Floor, Sector-7, Rohini, Delhi-110085. Respondents were required to pay a monthly royalty fee @ Rs.

1,13,000/- and applicable GST to petitioner in terms of the agreement. However, the respondents committed several breaches of the agreements and

the royalty fee has not been paid since January, 2020. Consequently, petitioner issued a Defect Cure Notice dated 27.11.2020 to respondents for

defaults in compliance of obligations under Article 1.7 of the Franchisee Agreement dated 19.06.2019 and called upon the respondents to cure the

defects. Despite service of the notice, no action was taken to cure the defects. Petitioner then issued another Defect Cure Notice dated 31.12.2020,

but again to no avail.

3. It is further averred that several people who visited the respondents' outlet had complained of the substandard quality of food being served therein.

This was bound to happen as the respondents had stopped procuring the exclusive spices and other material from the petitioner, which were essential

to maintain the quality and consistency of the exclusive taste that is assured in the petitioner's products. As a result, petitioner's goodwill and brand

reputation was getting diminished. Thereafter, petitioner terminated the agreement vide notice dated 24.02.2021 with effect from 08.01.2021.

4. It is also averred that vide the said Notice, petitioner invoked Arbitration Agreement and invited the respondents to commence arbitration

proceedings under the aegis of Delhi International Arbitration Centre (DIAC). However, respondents failed to do so. Even after the service of the

aforesaid Termination Notice dated 24.02.2021, respondents failed to cease the operation of franchisee business.

5. Pertinently, in the interregnum, the petitioner also approached this Court under Section 9 of the Arbitration and Conciliation Act in O.M.P. (I)

(COMM.) 232/2021, wherein vide order dated 02.09.2021, this Court directed the respondents to cease to operate or conduct the franchise business;

and to cease, desist from using the petitioner's brand name(s)/ trade name(s)/ trademark(s), service mark(s), logo(s), style and/ or any mark(s) which

is deceptively similar; and to remove/ all signs and or advertisements identifiable in any way with petitioner's trademark(s)/ name(s) till the next date of

hearing. Hence, the present petition has been filed.

6. During the course of hearing, learned counsel appearing on behalf of respondents has agreed to appoint a Sole Arbitrator to adjudicate the dispute

between the parties subject to all issues to remain open before the learned Arbitrator.

7. Accordingly, the present petition is referred to Delhi International Arbitration

Centre (DIAC) for appointment of Arbitrator as per rules.

8. Needless to say, the learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

9. The present petition stands disposed of accordingly.

10. A copy of this order be sent to the learned Arbitrator for information.