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(2022) 01 DEL CK 0046

In the Delhi High Court

Case No : Arbitration Petition No. 1140 Of 2021

Modi-Mundipharma Beauty Products Private Limited — APPELLANT

Vs

S.M Enterprises Through Its Proprietor & Anr — RESPONDENT

Date of Decision : 07-01-2022

Acts Referred:
Arbitration And Conciliation Act, 1996 — Section 9, 11(5), 12, 14, 16

Citation : (2022) 01 DEL CK 0046

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Saksham Tyagi, Ashwani Kumar, Abhay Kakkar

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

The hearing has been conducted through video conferencing.

1. Present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of arbitrator to adjudicate the

disputes between the parties.

2. Pertinently, petitioner is a private limited company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of

marketing, selling of cosmetic and personal care products.

3. According to the petitioner, respondent no.1 is a proprietorship firm and engaged in the business of trading of cosmetic products and running and

managing the sale of various products. Respondent no.2 is the sole proprietor of respondent no.1.

4. It is averred that petitioner executed a Memorandum of Understanding with the respondents on 27.07.2017 for selling the products of the petitioner

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under the brand name of â??Revlonâ? & â??Street Wearâ? for a period of 2 years commencing from 27.07.2017 till 26.07.2019 which could be

renewed for further term of 12 months. On 25.08.2017, petitioner company had entered into a lease deed with Mr.Manoj Kumar Lilani, Mr.Dalip

Kumar Lilani and Mr.Sanjay Kumar Lilani, owners of the premises bearing Shop No.J-15 AB, Lajpat Nagar-II, New Delhi for operating a store under

the brand name â??Revlonâ?? for selling cosmetic products.

5. Counsel for the petitioner submits that petitioner- Company contacted the Respondents and its personnel on various occasions for ensuring strict

complianceÂ ofÂ theÂ MoUÂ butÂ onÂ oneÂ pretextÂ orÂ theÂ other,Â Respondents deliberately have not complied with the same.

Consequently, petitioner issued a notice dated 02.07.2019 to the respondents about continuous breach of the binding terms and conditions of the MoU

and in terms of clause 5 of the said MoU called upon the respondent to rectify the breaches within 15 days, failing which the said MoU would stand

terminated. Though, respondents replied but to no avail. Accordingly, MoU stood terminated as no rectification of the breaches was done by the

respondents. Aggrieved by the illegal actions of the respondents and upon termination of the MoU, petitioner served a notice of vacation for the

premises in question and calling upon the respondents to pay rental of the premises which they have been occupying illegally since 24.07.2019 to

13.04.2021, which amounts to Rs.64,73,055/-.

6. Thereafter, petitioner sent a legal demand cum arbitration notice to the respondents under Clause 11 of the said MoU to vacate the premise in

question and clear the outstanding amount due. Moreover, petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 in

Delhi District Court, Saket wherein both the parties appeared and upon the submission of respondentsâ?? counsel, petitioner nominated Mr.Rahul

Khosla, Advocate as the sole arbitrator under the Arbitration and Conciliation Act, 1996.

7. During the course of hearing, counsel for the petitioner submitted that petitioner and respondents appeared before the arbitrator through virtual

mode and on 10.11.2020, respondents filed an application under Section 14 r/w Section 12 & 16 of the Arbitration and Conciliation Act, 1996 raising

objections to the learned Sole Arbitrator just before the second hearing before

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the tribunal. As per the order dated 13.04.2021, respondents handed

over possession of the premises to the owners of the premises. On 26.09.2021, learned Tribunal allowed the abovesaid application of the respondents

and tribunal was dissolved. Hence, the present petition has been filed.

8. Learned counsel for respondents has objected to the averments made in the present petition, however, has submitted that the disputes are arbitrable

and he has no objection if this Court appoints a sole arbitrator.

9. In view of the above the present petition is allowed. Accordingly, Mr. Balbir Singh, District & Session Judge (Retd.), (Mobile: 9416791008) is

appointed sole Arbitrator to adjudicate the dispute between the parties.

10. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

11. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

12. The petition stands disposed of accordingly.

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

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