THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

ARBITRATION APPLICATION No.100 of 2024

ORDER:

Mr. T.Sharath, learned counsel for the applicant appeared through video conferencing.

Mr. Shravanth Paruchuri, learned counsel representing Mr. Lakshmikanth Reddy Desai, learned counsel for the respondent.

2. By means of this arbitration application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, "the Act"), the petitioner seeks appointment of an arbitrator.

3. Facts giving rise to filing of this arbitration application briefly stated are that the parties had entered into a Franchise Agreement on 26.06.2019. Clause 4 of Article XXVIII of the said Franchise Agreement contains an arbitration clause. The aforesaid clause is extracted below for the facility of reference:

> "Arbitration: 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 in Hyderabad, India 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 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."

4. The dispute had arisen between the parties. Thereupon, the applicant sent a notice dated 16.01.2024 to the respondent wherein the respondent was asked to refund a sum of Rs.16,29,567/- within a period of one week as well as to handover the DVR hard drive/disk and the cell phone to the applicant, failing which appropriate action in terms of the Franchise Agreement holding the respondent responsible for all costs and consequences would be initiated. The respondent submitted a reply on 06.02.2024 to the said notice. Thereafter, this arbitration application had been filed.

5. Learned counsel for the applicant, while inviting the attention of this Court to Section 11(2) of the Act, submitted that no procedure has been agreed for appointment of the arbitrator. It is further submitted that the notice dated 16.01.2024 is, in fact, a notice under Section 21 of the Act.

6. On the other hand, learned counsel for the respondent has submitted that the notice dated 16.01.2024 does not comply with the requirement of Section 21 of the Act, which is a condition precedent for invocation of the jurisdiction under Section 11(6) of the Act, and therefore the arbitration application filed by the applicant is liable to be dismissed. In support of his submissions, reliance has been placed on the decisions of the Supreme Court in **Bharat Sanchar Nigam Ltd. v. M/s. Nortel Networks India Pvt. Ltd.**[1] and **M/s. Arif Azim Co. Ltd. v. M/s. Aptech Ltd**[2].

7. I have considered the submissions made on both sides and have perused the record.

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[1] (2021) 5 SCC 738 : 2021 SCC OnLine SC 207
[2] (2024) 5 SCC 313 : 2024 SCC OnLine SC 215

8. In **Malvika Rajnikant Mehta v. JESS Constructions** (Order dated 28.04.2022 in Arbitration Application No.425 of 2019), the Bombay High Court has held as under:

> "31. Admittedly, the applicants do not claim that they had issued a notice before lodging the statement of claim with the named Arbitrator. The submission on behalf of the applicants that the parties had named the Arbitrator for resolution of the disputes cannot be stretched to the extent the applicants desire. The mere fact that the parties have named the Arbitrator would not imply that the parties have agreed to waive the requirement of notice contemplated under Section 21 of the Act. The notice under Section 21, as we have seen above, serves definite purposes. One, it puts the adversary on notice as to the nature of the claim, even when the Arbitrator is named by the parties. Two, it provides an opportunity to the adversary to contest the admissibility of the claims on the threshold. Three, it allows adversary to raise the issue of the impartiality of the Arbitrator and the consequent disqualification. Four, the date of the receipt of the notice has a bearing upon the date of the commencement of the arbitration. Therefore, an inference that the parties had waived the notice cannot be drawn merely for the reason that the parties had named an Arbitrator."

9. The Supreme Court in **M/s. Arif Azim Co. Ltd.** (supra), in paragraph 57 has held as under:

"57. The other way of ascertaining the relevant point in time when the limitation period for making a Section 11(6) application would begin is by making use of Hohfeld's analysis of jural relations. It is a settled position of law that the limitation period under Article 137 of the Limitation Act, 1963 will commence only after the right to apply has accrued in favour of the applicant. As per Hohfeld's scheme of jural relations, conferring of a right on one entity must entail the vesting of a corresponding duty in another. When an application under Section 11(6) of the 1996 Act is made before this Court without exhausting the mechanism prescribed under the said sub-section, including that of invoking arbitration by issuance of a formal notice to the other party, this Court is not duty-bound to appoint an arbitrator and can reject the application for being premature and non-compliant with the statutory mandate. However, once the procedure laid down under Section 11(6) of the 1996 Act is exhausted by the applicant and the application passes all other tests of limited judicial scrutiny as have been evolved by this Court over the years, this Court becomes duty-bound to appoint an arbitrator and refer the matter to an Arbitral Tribunal. Thus, the "*right to apply*" of the applicant can be said to have as its jural corelative the "*duty to appoint*" of this Court only after all the steps required to be completed before instituting a Section 11(6) application have been duly completed. Thus, the limitation period for filing a petition under Section 11(6) of the 1996 Act can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal

> on part of that other party in complying with the requirements mentioned in such notice."

10. In the instant case, the notice dated 16.01.2024, contains no reference to the dispute to be referred to arbitrator. Merely stating that the dispute had arisen between the parties and to make a reference to a claim would not fulfil the requirement of Section 21 of the Act. In the absence of notice under Section 21 of the Act, the arbitration application under Section 11 of the Act cannot be entertained.

11. In the result, the arbitration application is dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

ALOK ARADHE, CJ

06.09.2024
vs