



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 9th OF JULY, 2025

ARBITRATION CASE No. 21 of 2025

*M/S TAST HEALTHY FOODS INDIA PVT. LTD. THROUGH ITS
DIRECTOR MR. ARUN SHRIVASTAVA*

Versus

M/S R.T. FOOD PRODUCTS

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Appearance:

Shri Siddharth Sharma, Advocate for the applicant.

Shri Arun Dudawat, Advocate for the respondent.
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ORDER

This application, under section 11(6) of the Arbitration and Conciliation Act, 1996 has been filed for appointment of sole Arbitrator.

2. Applicant and respondent entered into licence/usage cum sale agreements dated 24/06/2020 and 25/06/2020 containing arbitration clause. It is the case of applicant that due to non grant of Input tax credit (transitional credit), applicant was unable to conduct its business due to cancellation of GST number by GST Authorities. Applicant and partner of respondent-firm namely Ajeet Kumar Gupta were in business relationship for last few years as Ajeet Kumar Gupta used to purchase the manufactured packed food products from the applicant-Company. Therefore, applicant considering the past business relations with Ajeet Kumar Gupta, decided to enter into a licence/usage cum sale agreements dated 24/06/2020 and 25/06/2020 with the respondent, wherein applicant had given exclusive rights including the



license to use the assets (Building, Plant and Machinery) to the respondent. Respondent was supposed to pay Rs.4,00,000/- for usage of the Food Park, Plot No.40, Industrial Area, Malanpur, District Bhind along with all other assets situated therein. Respondent was supposed to pay Rs.1,50,000/- for usage of the Food Park, Plot No.39, Industrial Area, Malanpur, District Bhind. The respondent was supposed to use the assets, both tangible and intangible and licences etc. in a skillful and proper manner and carry out repair and maintenance at it's own expenses to keep the machinery in good condition. Lincensee was also supposed to use the assets and if at all, the licensee/respondent wished to acquire the same, the same could have been purchased/taken over as per the value arrived at after taking simple average of two amounts mentioned in Clause 4 of the agreements. Apart from that, licensee was supposed to pay all the license/usage/possession fees, applicable taxes, assessments and registration fees on the equipments payable to the Government, local authority in respect of the said assets. Respondent was also supposed to make payment of electricity bills and license fee payable to MPIDC.

3. It is the case of applicant that initially respondent deposited the advance amount of RS.45,00,000/- approximately. Thereafter, the respondent did not pay a single penny. Applicant requested for making payment. Respondent assured that payment shall be made as per the agreements. Later, respondent with an intention to cheat the applicant, on 1/3/2022 entered in the premises and committed an act of dacoity thereby taking away the assets including plant and machinery, assessment value as



per purchase bill of said dacoity assets is Rs.1,25,22,000/-. It is also alleged that Ajeet Gupta also took away the plant and machinery worth Rs.1.25 crore with the aid of 20 persons. The matter was reported to Police. In view of the aforementioned illegal acts and breach of agreements, applicant has suffered huge financial loss and, accordingly, sent a notice invoking arbitration as admittedly the disputes have arisen between the parties. The said notice was neither replied nor any intention was shown by the respondent to make the payment and, thus, it is alleged that respondent has failed to agree for appointment of Arbitrator. It is submitted that clause 18 of the Licence/Usage Cum Sale Agreements dated 24/06/2020 and 25/06/2020 provides for adjudication of dispute by way of arbitration.

4. The application is vehemently opposed by counsel for respondent. It is submitted by counsel for respondent that applicant never raised any dispute and directly sent notice dated 21/5/2024 thereby invoking the arbitration clause. It is submitted that unless and until a dispute is raised and only if the parties fail to resolve the same, then the arbitration clause can be invoked. However, in the present case, the dispute was never raised.

5. In reply, it is submitted by counsel for applicant that notice dated 21/5/2024 is a composite notice for raising dispute as well as invoking arbitration clause, therefore, it is incorrect to say that notice dated 21/5/2024 cannot be relied upon for maintaining the application filed under section 11(6) of the Act.

6. Heard, learned counsel for the parties.

7. In paragraph 8 of the notice dated 21/5/2024, it is mentioned as



under:-

"8. My client has made several attempts to you noticee to settle the dues however till date my client has not heard any positive response from you noticee. It seems that you noticee is trying to delay and is escaping from your liabilities under the agreement."

8. Thus, it is the case of applicant that he had made several attempts to the noticee to settle the dues, but applicant has not heard any positive response from the respondent. The applicant has not filed any document to substantiate the aforesaid contention made in paragraph 8 of its notice.

9. Thus, it is clear that without raising any dispute, applicant has directly approached this Court under S.11 of the Act.

10. Clause 18 of the agreements dated 24/6/2020 and 25/06/2020 reads as under:-

"18. In case of any dispute or difference arising between the parties regarding the meaning, construction, interpretation, breach or fulfillment or non-fulfillment of the terms and obligations of these presents or any clause or condition thereof, the same shall be referred to the decision and arbitration of two arbitrators, one to be nominated by each party & decision of arbitrators which arbitrators shall before taking upon themselves the burden of reference, as the case may be, shall be final and binding on the parties."

It is not out of place to mention here that common words have been used in Clause 18 of both the agreements.

11. Now the only question for consideration is as to whether in absence of any pre-arbitration proceedings, the applicant can directly approach this Court by issuing a common notice thereby raising the claim in the form of dispute, as well as, by invoking the arbitration clause ?



12. The Supreme Court in the case of *Visa International Ltd. v. Continental Resources (USA) Ltd.*, reported in (2009) 2 SCC 55 has held as under:-

"38. It was contended that the pre-condition for amicable settlement of the dispute between the parties has not been exhausted and therefore the application seeking appointment of arbitrator is premature. From the correspondence exchanged between the parties at pp. 54-77 of the paper book, it is clear that there was no scope for amicable settlement, for both the parties have taken rigid stand making allegations against each other. In this regard a reference may be made to the letter dated 15-9-2006 from the respondent herein in which it is inter alia stated "... since February 2005 after the execution of the agreements, various meetings/discussions have taken place between both the parties for furtherance of the objective and purpose with which the agreement and the MoU were signed between the parties. Several correspondences have been made by CRL to VISA to help and support its endeavour for achieving the goal for which the abovementioned agreements were executed". In the same letter it is alleged that in spite of repeated requests the petitioner has not provided any funding schedules for their portion of equity along with supporting documents to help in convincing OMC of financial capabilities of the parties and ultimately to obtain financial closure of the project. The exchange of letters between the parties undoubtedly discloses that attempts were made for an amicable settlement but without any result leaving no option but to invoke the arbitration clause.

39. The next question that falls for consideration is as to whether there is a live issue between the parties? The application for arbitration can be made only when a dispute arises between the parties to the arbitration agreement and such dispute gives rise to a live issue. As to what is the meaning and nature of dispute has been summed up by Mustill and Boyd in their treatise on arbitration law titled *Law and Practice of Commercial Arbitration*, 1982:

"A dispute means that there may be a difference of opinion as to the future performance of a contract. For example, one party may be denying that any further performance is due, on the ground that the contract has been discharged by repudiation or frustration; or it may be a common ground that the contract is subsisting, but the parties may be in a dispute about whether a particular act would constitute a valid performance, or whether one party is entitled to give a particular order, or exercise an option in a particular way. If the parties stand their ground in such a situation, a time will come



when it is too late for the right view to prevail; one party will irremediably be in the wrong; and serious financial loss is likely to ensue. All this can be prevented if the parties can mount arbitration with sufficient speed to enable them to know the true position under the contract before the time for performance has finally expired.”

In the present case, in this sense there is a dispute and live issue between both the parties. It is not a stale claim or a claim barred by any limitation. However, it is required to note that this finding as to the existence of dispute is confined only for the purpose of finding out whether the arbitral procedure has to be started for resolving the live issue in between the parties.

40. In *SBP & Co. v. Patel Engg. Ltd.* [(2005) 8 SCC 618] it is observed: (SCC pp. 660-61, para 39)

“39. It is necessary to define what exactly the Chief Justice, approached with an application under Section 11 of the Act, is to decide at that stage. Obviously, he has to decide his own jurisdiction in the sense whether the party making the motion has approached the right High Court. He has to decide whether there is an arbitration agreement, as defined in the Act and whether the person who has made the request before him, is a party to such an agreement. It is necessary to indicate that he can also decide the question whether the claim was a dead one; or a long-barred claim that was sought to be resurrected and whether the parties have concluded the transaction by recording satisfaction of their mutual rights and obligations or by receiving the final payment without objection. It may not be possible at that stage, to decide whether a live claim made, is one which comes within the purview of the arbitration clause. It will be appropriate to leave that question to be decided by the Arbitral Tribunal on taking evidence, along with the merits of the claims involved in the arbitration. The Chief Justice has to decide whether the applicant has satisfied the conditions for appointing an arbitrator under Section 11(6) of the Act. For the purpose of taking a decision on these aspects, the Chief Justice can either proceed on the basis of affidavits and the documents produced or take such evidence or get such evidence recorded, as may be necessary. We think that adoption of this procedure in the context of the Act would best serve the purpose sought to be achieved by the Act of expediting the process of arbitration, without too many approaches to the court at various stages of the proceedings before the Arbitral Tribunal.”

41. It is amply clear from the facts as pleaded and as well as from



the exchange of correspondence between the parties that there has not been any satisfaction recorded by the parties with respect to their claims. There has been no mutual satisfaction arrived at between the parties as regards the dispute in hand. The claims are obviously not barred by any limitation. It is thus clear that there is a live issue subsisting between the parties requiring its resolution."

13. The Supreme Court in the case of *Demerara Distilleries (P) Ltd. v. Demerara Distillers Ltd.*, reported in (2015) 13 SCC 610 has held as under

"4. The respondent Company further contends that invocation of the arbitration clause, even if the same is held to be applicable, is premature as under Clause 3 of the Agreement, differences are required to be resolved first by mutual discussions, followed by mediation, and, only on failure of mediation recourse to arbitration is contemplated. It is also contended that the disputes raised are not arbitrable inasmuch as what the petitioners really want is the winding up of the Company. It is further submitted that the respondent Company had initiated a proceeding alleging oppression and mismanagement in the administration of the joint venture company, which is presently pending before the Company Law Board. It is stated that, in the said proceedings, the petitioners have appeared and sought reference to arbitration under Section 8 of the Act. All the aforesaid facts have not been stated in the application/petition under Section 11(6) of the Act. It is on the aforesaid broad basis that the assertions and the claims made in the present petition have been sought to be resisted by the respondent.

5. Of the various contentions advanced by the respondent Company to resist the prayer for appointment of an arbitrator under Section 11(6) of the Act, the objections with regard the application being premature; the disputes not being arbitrable, and the proceedings pending before the Company Law Board, would not merit any serious consideration. The elaborate correspondence by and between the parties, as brought on record of the present proceeding, would indicate that any attempt, at this stage, to resolve the disputes by mutual discussions and mediation would be an empty formality. The proceedings before the Company Law Board at the instance of the present respondent and the prayer of the petitioners therein for reference to arbitration cannot logically and reasonably be construed to be a bar to the entertainment of the present application. Admittedly, a dispute has occurred with regard to the commitments of the respondent Company as regards equity participation and dissemination of technology as visualised under the Agreement. It would, therefore, be difficult to hold that the same would not be arbitrable, if otherwise, the arbitration clause can be legitimately invoked. Therefore, it is the objection of the respondent Company that the present petition is not



maintainable at the instance of the petitioners which alone would require an in-depth consideration."

14. Thus, in absence of any mandatory requirement to go for any amicable settlement prior to invoking arbitration clause, this Court is of considered opinion that a single notice raising dispute, as well as, invoking arbitration clause is maintainable and can be said to be sufficient notice to the respondent for maintaining the application under S.11(6) of the Act.

15. In the present case, respondent has not filed any reply. It is not the case of respondent that they are ready to amicably settle the dispute. In absence of any reply or any verbal submission that respondents are ready to amicably settle the dispute without invoking the arbitration clause, this Court is of considered opinion that a common notice issued by the applicant thereby raising dispute, as well as, invoking arbitration clause is sufficient to maintain an application filed under S.11(6) of the Act. The respondent has not disputed the existence of arbitration clause. Since there appears to be a dispute between the parties and arbitration clause is provided, therefore, this application is allowed with the following directions:-

(i) Arbitration case is referred to Madhya Pradesh Arbitration Centre (Domestic and International), Jabalpur (M.P.D.I.S.E.)

(ii) Mr. Justice K.K.Trivedi, Former High Court Judge, R/o Block No.3, Vasundhara Vihar, Near St. Thomas School, South Civil Lines, Jabalpur (M.P.), e-mail - trivedikk@yahoo.com is appointed as sole independent Arbitrator to resolve the dispute between the parties.

(iii) Director of Madhya Pradesh Arbitration Centre (Domestic and International), Jabalpur (M.P.D.I.S.E.) is directed to inform the said



Arbitrator regarding his appointment and receive his consent. If said Arbitrator does not give his consent then matter may be referred to this Court for appointment of another Arbitrator.

(iv) Director in consultation with Arbitrator and parties shall fix date for arbitration.

(v) Arbitration case shall be carried out at Arbitration Center, Jabalpur (M.P.).

(vi) Parties are directed to deposit necessary charges and fees as per M.P. Arbitration Center (Domestic and International) Rules, 2019.

(vii) Other provisions of Section 15(3)(4) of the Arbitration and Conciliation Act, 1996 will apply to Substitute Arbitrator.

With aforesaid observations, arbitration case is disposed of.

(G. S. AHLUWALIA)
JUDGE

(and)