



\$~37

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 8th April, 2024

+ **ARB.P. 460/2024 and I.A. 7802/2024, 7803/2024**

AKHIL GUPTA Petitioner

Through: Mr. Sanjay Shah, Adv.

versus

HINDUSTAN UNILEVER LTD Respondent

Through: Mr. Prantar Basu Chowdhury and Mr.
Ashu Pathak, Advs. (M: 9910518386)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

I.A. 7802/2024 (for exemption)

2. This is an application seeking exemption from filing originals/certified/cleared/typed or translated copies of documents, left side margins, electronic documents, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought, strictly as per the provisions of the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions.

4. Accordingly, the application is disposed of.

ARB.P. 460/2024 & I.A. 7803/2024 (for delay)

5. The present petition is filed on behalf of the Petitioner-Mr. Akhil Gupta under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter '1996 Act'*) seeking appointment of a sole arbitrator to



adjudicate the disputes that have arisen between the parties.

6. It is the case of the Petitioner that he entered into a Redistribution Stockist Agreement dated 14th July, 2021 (*hereinafter*, 'Agreement') with the Respondent-Hindustan Unilever Ltd. As per the Agreement the Petitioner was appointed as a Redistribution Stockist of the Respondent which is engaged in manufacturing, marketing and sale of consumer and healthcare products.

7. According to the Petitioner, disputes arose between the parties and the Agreement was terminated by the Respondent on 14th February, 2022. The Petitioner further states that various monetary claims, to the tune of Rs 55,00,000/- have been raised by the Petitioner against the Respondent. With respect to the said claims and in terms of Clause 21 of the Agreement, the Petitioner issued a notice dated 6th March, 2023 to the Respondent invoking arbitration under Section 21 of the 1996 Act. However, it is stated that no reply was received to the said notice.

8. In the meantime, a suit was also instituted by the Petitioner, in the Gurgaon District Courts which has also been returned due to territorial jurisdiction and an appeal has been filed by the Petitioner.

9. Today, Id. Counsel for the Respondent confirms that there was no reply given to the notice dated 6th March, 2023. He, however points out that the arbitration clause and the dispute resolution clause in the Agreement contemplates appointment of an Ombudsman if the disputes amongst the parties are not resolved within a period of 2 months since they have arisen. The relevant portion of the Agreement which includes the dispute resolution and the arbitration clause reads as under:



“21. GRIEVANCE REDRESSAL & DISPUTE RESOLUTION

21.1 The Parties hereto agree and undertake that any dispute or disagreement arising out of or in connection with or relating to this Agreement including any question regarding its existence, validity or termination shall hereinafter be referred to as a "Dispute" and must be resolved pursuant to this Clause 21;

Provided that any dispute or disagreement arising out of or in connection with either Party's exercise of its right of termination under Clause 19.1 shall be excluded from the applicability of this Clause.

Resolution Process:

21.2 Either Party is entitled to raise a Dispute by notifying the other in writing of the same along with all relevant details. The RS and the Company must attempt to resolve any Dispute mutually amongst themselves by personal discussion between the Parties and in any event through the mandatory procedure prescribed in this Clause 21.

21.3 In the event if the Dispute is not resolved as stated above, for a period of more than two months from the notice specified in Clause 21.1 above, the said Dispute, during the subsistence of this Agreement, shall be referred in writing to the RS Ombudsman, who shall be selected by the RS from a list of 3 {three} names provided by the Company to the RS. It is clarified that no former or present employee or agent or party with whom the Company has pecuniary relationship will be eligible to be appointed as Ombudsman.

21.4 Proceedings by the Ombudsman may be held physically or through videoconferencing or teleconferencing, as may be mutually agreed by the Parties hereto. Proceedings before the Ombudsman shall be strictly confidential. The rules governing the proceedings before the Ombudsman will be determined by the Ombudsman and the Ombudsman has the powers to rule on its own jurisdiction. Any settlement agreement signed between the Parties pursuant to proceedings



before the Ombudsman shall be final and binding on the Parties.

21.5 In the event, the Ombudsman cannot resolve the Dispute within 2 (two) months from reference, such Dispute shall be referred to and finally resolved by arbitration in accordance with the (Indian) Arbitration and Conciliation Act, 1996 and all amendments or modifications thereto or re-enactments thereof. *The Parties agree that the arbitral tribunal shall comprise of a sole arbitrator to be selected by the RS within 30 (thirty) days of a list of 3 (three) probable arbitrators being notified to the RS in writing by the Company. In the event of the RS failing to appoint an arbitrator within 7 (seven) days of receiving the list of probable arbitrators, the arbitral tribunal will comprise of three arbitrators, of which 1 (one) shall be appointed by the Company and 1 (one) by the RS, and the 2 (two) arbitrators so appointed shall appoint the third and presiding arbitrator within 14 (fourteen) days of their appointment. In the event the Parties fail to constitute an arbitral tribunal or the two arbitrators so appointed fail to appoint the presiding arbitrator, the arbitral tribunal will be constituted by approaching the court of competent jurisdiction under section 11 of the (Indian) Arbitration and Conciliation Act, 1996. The seat of the arbitration shall be Delhi and the language of arbitration shall be English. The arbitral tribunal shall provide reasons for its award. The decision of the arbitrator shall be final and binding on the Parties.*

21.6 The sole arbitrator/ arbitral tribunal will make best efforts to pass an award within 4 (four) months from the date of the commencement of the arbitration.

22. GOVERNING LAW AND JURISDICTION

It is clearly agreed and understood by the Parties that their relationship is purely civil in nature and neither party would undertake and/or resort to any action of criminal in nature for settling their dues and/or Dispute between them arising out of their relations provided that the Company shall always retain the right to take all



actions, whether civil or criminal in nature, which it deems necessary to enforce its rights under the provisions of Negotiable Instruments Act. It is agreed that the lowest Courts of competent jurisdiction in Delhi shall have exclusive jurisdiction to hear any proceedings relating to the subject matter hereof, and the parties shall not raise any related proceedings in any other Court(s) including for any injunctive relief.”

10. Clearly, Clause 21 of the Agreement contemplates that the parties must first attempt resolution of disputes that have arisen between them, and only thereafter, if the same disputes are not resolved after a period of two months, the Ombudsman as contemplated in the aforesaid clause is to attempt and resolve the disputes.

11. In the present case, the notice invoking arbitration under Section 21 of the 1996 Act has been sent way back on 6th March, 2023. Further, the disputes have also ensued before the Gurgaon district courts and clearly at least for more than a year, the disputes that have arisen between the party qua the Agreement have not been resolved. In fact, the Respondent did not even reply to the notice dated 6th March, 2023.

12. Under such circumstances, the fact that there may be a dispute resolution clause contemplating specific procedure as to how the disputes amongst the parties which stem from the Agreement would be resolved, would have no meaning as clearly the Petitioner issued notice but the Respondent failed to take any steps for resolution of disputes. This is further fortified from the fact that the Respondent was also contesting the matter in Gurgaon and failed to send a reply to the notice. The relegation of parties to an Ombudsman at this stage is clearly a step which would further delay the



matter.

13. It is observed that the claims of the Petitioner have been raised in the notice dated 6th March, 2023. The arbitration clause is also not in dispute. The seat of arbitration is in Delhi.

14. Under these circumstances, the disputes are referred to **Ms. Nina Nariman, Advocate (M-9873755614)** who is appointed as the sole Arbitrator to adjudicate the disputes. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DIAC'). The fee of the Arbitrator shall be paid in terms of the 4th Schedule as amended by DIAC Rules, 2023.

15. In the meantime, if the parties wish to resolve their disputes amicably, they are free to do so.

16. The Arbitrator shall enter reference on 18th July, 2024.

17. The Petitioner undertakes that the appeal before the Gurgaon District Judge shall be withdrawn within a period of two weeks. The said undertaking is accepted. The same shall be confirmed to the Respondent's Counsel in writing and the same shall be sent to the DIAC as well.

18. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.

19. The petition is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH, J

APRIL 8, 2024
dj/rks