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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 13th October, 2025*

\+ ARB.P. 237/2025

M/S MASSIVE RESTAURANTS PRIVATE LIMITED .....Petitioner
Through: Mr. Prateek Kumar, Ms. Aarushi Jain, Mr. Yojit Pareek, Ms. Ankita and Mr. Prassant Kumar Sharma, Advocates.

versus

M/S PACIFIC HOSPITALITY .....Respondent
Through: Ms. Bhabna Das and Mr. Arpit Kumar Mishra, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. The case set up by the Petitioner is that Petitioner is engaged in the business of developing and operating premium dining brands and as a prudent business decision it granted its franchise to the Respondent for operating 'Farzi Cafe' under Franchise Agreement dated 27.07.2016 for Hyderabad region in the State of Telangana. Duration of the agreement was three years from 27.07.2016 to 26.07.2021 and both parties agreed to adhere to the terms of the agreement in the course of their business dealings. Parties also agreed to renew the agreement for a further term of 4 years, subject to satisfactory renewal of the Leave and License Agreement.

3. It is averred that parties continued with the business relationships even beyond the expiry of the Franchise Agreement since Respondent was operating the Cafe upto the year 2024. Several e-mails were exchanged between the parties, which would evidence this fact. Petitioner requested the Respondent through e-mails to renew the agreement and sign on the same along with an addendum, but Respondent kept delaying the same. Petitioner raised invoices for the period starting from 30.12.2021 to 30.09.2024 claiming royalty on the net sales made by the Respondent, which is a clear indicator that the café was being run beyond the expiry of franchise agreement. However, despite actively running the cafe, Respondent failed to pay the royalty payable under invoice dated 30.12.2021 as also invoices raised for the period 30.11.2023 to 30.09.2024 and the outstanding amount towards royalty as on 11.10.2024 was Rs.66,72,503/- including interest. Since Respondent continued to run the Cafe without paying the royalty, Petitioner sent an e-mail dated 09.08.2024 to immediately discontinue the operations and settle the outstanding dues, but Respondent failed to take any action and accordingly, Petitioner sent a legal notice dated 11.10.2024 demanding outstanding dues as also asking the Respondent to immediately cease unauthorized operation of the Cafe.

4. It is stated that the Franchise Agreement contains Clause 16 which is the Dispute Resolution Clause, envisaging reference of any dispute arising out of or in connection with the agreement to arbitration, if the same was not resolved within 30 days after service of notice by one party to the other. Invoking the said clause, Petitioner filed a petition under Section 9 of the 1996 Act being O.M.P.(I)(COMM.) No. 294/2024 before District Judge (Commercial), Patiala House Courts and vide order dated 26.11.2024, Court

restrained the Respondent from using Petitioner's brand name Farzi Cafe or any other trademarks and logos etc. It was directed that the interim order shall continue for a period provided under Section 9(2) of the 1996 Act and on constitution of the Arbitral Tribunal, it would be open to the Tribunal to continue/modify/vary the order on application(s) filed by either party, uninfluenced by any observation made in the said order. By the same order Respondent was directed to provide security for unpaid royalties. On 12.12.2024, Petitioner invoked the arbitration clause and sent a notice under Section 21 of the 1996 Act proposing the name of a Sole Arbitrator. On failure of the Respondent to consent to the appointment of the Arbitrator within 30 days from the date of receipt of the notice, Petitioner filed the present petition.

5. Learned counsel for the Respondent raised an objection to the appointment of an Arbitrator and reference of disputes to arbitration on the ground that no arbitration agreement exists between the parties for reference of the disputes sought to be raised pertaining to invoices for the period post-expiry of the Franchise Agreement dated 27.07.2016. As per Clause 9.1 of the agreement, the same was valid only for 5 years ending on 26.07.2021. No written agreement was executed between the parties renewing the Franchise Agreement and extending its term. Section 7(3) of the 1996 Act mandates an arbitration agreement to be in writing and it is trite that there can be no oral or implied arbitration agreement. In the absence of existence of a valid written arbitration agreement between the parties, no relief can be claimed under Section 11(6) of the 1996 Act.

6. It was further urged that it was evident from the averments in the petition that the disputes sought to be referred by the Petitioner to arbitration

pertain to unpaid royalties from November, 2023 to September, 2024 and the disputes of trademark infringement arose only in the year 2024 i.e., long after Franchise Agreement had expired. Therefore, Petitioner cannot invoke Clause 16 of the Franchise Agreement since it governs only disputes which arise out of in connection with the written Franchise Agreement. In this context, reliance was placed on the judgment of this Court in ***Wire & Wireless (India) Ltd. & Anr. v. Anirudh Singh Jadeja, 2009 SCC OnLine Del 4199*** as also ***Shine Travels & Cargo Pvt. Ltd. v. Mitisui Prime Advanced Composite India Ltd., 2022 SCC OnLine Del 518*** and ***A.N. Traders Private Limited v. Shriram Distribution Services Private Limited, 2018 SCC OnLine Del 12416.***

7. The second and the only other objection is that this Court lacks territorial jurisdiction to entertain the petition on the ground that office of the Respondent is in Hyderabad while registered office of the Petitioner is in Gurugram. The Farzi Cafe in question in respect of which disputes are raised is located in Hyderabad and therefore, no part of cause of action has arisen in Delhi. Reliance is placed on Section 2(1)(e)(i) of the 1996 Act and Section 20 CPC. It is a settled position of law that parties cannot by consent or contract confer jurisdiction on Court which otherwise lacks jurisdiction and such a contract would be contrary to public policy. In light of the judgments of the Supreme Court in ***Harshad Chiman Lal Modi v. DLF Universal Ltd. & Another, (2005) 7 SCC 791*** and ***Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee, 2022 SCC OnLine SC 568,*** Clause 15 of the Franchise Agreement which deals with '*Governing Law and Jurisdiction*' conferring the Courts at New Delhi the exclusive jurisdiction in relation to matters arising out of the Franchise Agreement will not confer

jurisdiction on this Court, which it does not otherwise have.

8. It was also argued that Delhi has not been designated as 'seat' by the parties and Clause 16 of the Franchise Agreement only refers to Delhi as being the 'venue' of arbitration. It is a settled law that seat of arbitration is a fixed place and the Court within whose territorial limits the seat is located has jurisdiction notwithstanding any other factor, however, venue is not fixed and can change with the convenience of the parties. In ***Ravi Ranjan (supra),*** the Supreme Court held that venue or place cannot be equated with seat of arbitration, which has a different connotation and therefore, mere designation of Delhi as venue in the arbitration Clause, will not confer territorial jurisdiction upon this Court.

9. Learned counsel for the Petitioner *per contra* argued that neither of the two objections raised by the Respondent have any merit. It was contended that no doubt the term of the Franchise Agreement was 5 years upto 26.07.2021 but parties continued with the business dealings inasmuch as Respondent was regularly operating the Cafe till an injunction order was passed by the District Court on 26.11.2024 and were in serious talks for renewing the agreement. This is evident from several communications exchanged between the parties vide e-mails dated 06.02.2023, 25.04.2023, 03.01.2024 and 31.01.2024 to refer to a few. Petitioner was regularly raising invoices as Respondent continued to operate the Cafe, but royalty was not paid for the period November, 2023 to September, 2024 including for the month of December, 2021. It was urged that once parties continued with the business relationships beyond the initial term of the Franchise Agreement, the disputes for the period post the expiry of this agreement will be referrable to arbitration and in this context, reliance was placed on the

judgments of the Supreme Court in ***Bharat Petroleum Corporation Ltd v. Great Eastern Shipping Co. Ltd., (2008) 1 SCC 503*** and ***Reva Electric Car Company Private Limiter v. Green Mobil, (2012) 2 SCC 93*** as also the judgment of this Court in ***M/s S.K. Agencies v. M/s DFM Foods, 2023 SCC OnLine Del 8148***. It was also argued that in arbitration jurisprudence, it is a settled law that arbitration clause outlives the agreement it is contained in and in this context, reliance was placed on the judgement of the Bombay High Court in ***Raymond Limited v. Miltex Apparels and Others, 2025 SCC OnLine Bom 333***.

10. Insofar as the objection of territorial jurisdiction is concerned, it was argued that the arbitration clause designates Delhi as venue of arbitration and there being no contrary *indicia,* the venue will be the juridical seat and this Court will have territorial jurisdiction to entertain this petition. *Albeit* it is settled that a generic jurisdiction clause cannot supersede the supervisory jurisdiction of the Courts and an arbitration clause, whereby parties by mutual consent designate a neutral venue, *de hors* the fact that no cause of action arises at that place, in the present case even the general jurisdiction clause i.e., Clause 15 pertaining to 'Governing law and Jurisdiction' also provides that Courts at New Delhi shall have exclusive jurisdiction in relation to all matters arising out of the Franchise Agreement.

11. Heard learned counsels for the parties and examined their rival submissions.

12. Two-fold objections have been raised by the Respondent to the appointment of the Arbitrator and reference of disputes raised by the Petitioner. Insofar as the first objection that no valid arbitration agreement exists between the parties since the Franchise Agreement dated 27.07.2016

expired on 26.07.2021 and the disputes sought to be referred pertain to the period post its expiry is concerned, the same has no merit. In ***Reva Electric Car (supra),*** the Supreme Court was dealing with an application under Section 11 of the 1996 Act, wherein the Respondent had raised an objection that the MoU dated 25.09.2007 expired on 31.12.2007 and the disputes sought to be referred to arbitration related to commercial distribution of cars which commenced from 01.01.2008 i.e., after expiry of the MoU and therefore, the arbitration clause relied upon by the Petitioner did not cover the disputes/claims relatable to period beyond 31.12.2007. It was *inter alia* argued by the Petitioner that irrespective of whether MoU was in existence or not, the arbitration clause would survive. On a factual note, it was pointed out that though the term of MoU was till December, 2007, it was extended by the acts of the parties till 25.09.2009 when through an e-mail, Petitioner requested the Respondent to cease sales and marketing activities, which constituted termination of the contractual relationships between the parties.

13. The Supreme Court examined the rival contentions as also the factual position obtaining in the matter and holding that the disputes that had arisen between the parties related to MoU dated 25.09.2007 and it would be for the Arbitral Tribunal to decide whether the claims are within the arbitration clause, appointed the Arbitrator. Relevant paragraphs of the judgment are as follows:-

> *"**40.** The aforesaid averments and the material on record would clearly demonstrate that the disputes that have arisen between the parties clearly relate to the MoU dated 25-9-2007. It would be for the Arbitral Tribunal to decide as to whether claims made are within the arbitration clause. The Arbitral Tribunal would also have to decide the merits of the claim put forward by the respective parties. In view of the material placed on record, it would not be possible to accept the submissions of Ms Ahmadi that the disputes were beyond the purview of the arbitration clause.*
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> ***41.** A similar matter was examined by this Court in Bharat Petroleum*

Corpn. Ltd. v. Great Eastern Shipping Co. Ltd. In the aforesaid case, an agreement called time charter party was entered into between the appellant and the respondent on 6-5-1997 for letting on hire vessels for a period of two years from 22-9-1996 to 30-6-1997 and from 1-7-1997 to 30-6-1998. It appears that certain disputes arose between the parties. Thereafter, on the basis of the correspondence exchanged between the parties with regard to the disputes, claims and counterclaims were filed before the Arbitral Tribunal. Issues were duly framed of which the following three issues may be of some relevance in the present context viz.: (SCC p. 509, para 12)

> *"Issue 1.—Whether the Hon'ble Arbitral Tribunal has no jurisdiction to adjudicate upon the dispute between the claimant and the respondent for the period September 1998 to August 1999 in respect of the vessel Jag Praja for the reasons stated in Para 1 of the written statement?*
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> *Issue 2.—Whether there is any common practice that if the vessel is not redelivered at the end of the period mentioned in the time charter the vessel would be governed by the charter party under which originally it was chartered?*
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> * * *
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> *Issue 5.—Whether the time charter party dated 6-5-1997 came to an end by efflux of time on 30-8-1998?"*

xxx xxx xxx

***54.** Under Section 16(1), the legislature makes it clear that while considering any objection with respect to the existence or validity of the arbitration agreement, the arbitration clause which formed part of the contract, has to be treated as an agreement independent of the other terms of the contract. To ensure that there is no misunderstanding, Section 16(1)(b) further provides that even if the Arbitral Tribunal concludes that the contract is null and void, it should not result, as a matter of law, in an automatic invalidation of the arbitration clause. Section 16(1)(a) presumes the existence of a valid arbitration clause and mandates the same to be treated as an agreement independent of the other terms of the contract. By virtue of Section 16(1)(b), it continues to be enforceable notwithstanding a declaration of the contract being null and void. In view of the provisions contained in Section 16(1) of the Arbitration and Conciliation Act, 1996, it would not be possible to accept the submission of Ms Ahmadi that with the termination of the MoU on 31-12-2007, the arbitration clause would also cease to exist.*

***55.** As noticed earlier, the disputes that have arisen between the parties clearly relate to the subject-matter of the relationship between the parties which came into existence through the MoU. Clearly, therefore, the disputes raised by the petitioner need to be referred to arbitration. Under*

the arbitration clause, a reference was to be made that the disputes were to be referred to a single arbitrator. Since the parties have failed to appoint an arbitrator under the agreed procedure, it is necessary for this Court to appoint the arbitrator."

14. As can be seen from the judgement, a similar issue had arisen before the Supreme Court in ***Bharat Petroleum (supra),*** and the facts of this case are close to the present case. A time charter party was entered into between the Appellant and the Respondent on 06.05.2007 for letting on hire vessels for a period of two years. This was extended by one month with option for two further extensions by 15 days each. Pending finalization of new charter party for period commencing 01.09.1998, several offers and counter-offers were exchanged between the parties and while no formal agreement was executed, vessels of the Respondent continued to be chartered by the Appellant till 31.08.1999 and ultimately on failure of negotiations, Respondent called upon the Appellant to pay the balance amount of Rs. 4.4 crores as charter hire for the period 01.09.1998 to 31.08.1999. Arbitral Tribunal was constituted to adjudicate the disputes but the Tribunal was of the view that the original charter party got extinguished and thus it had no jurisdiction in the matter. The question that arose before the Supreme Court was whether on expiry of the extended period of charter hire on 31.08.1998, the charter party dated 06.05.1997 came to an end and the arbitration agreement perished with it. The Supreme Court answered the question in the negative and held as under:-

*"**17.** Thus, the short question for determination is whether on the expiry of the extended period of charter hire on 31-8-1998, charter party dated 6-5-1997 came to an end and the arbitration agreement between the parties perished with it?*

***18.** Before we proceed to examine the rival stands, we may note, at the outset, that neither the Arbitral Tribunal nor the High Court have gone into the question whether the claim made by the respondent would*

otherwise fall within the ambit of the arbitration clause in the charter party or not. What is in dispute is whether the arbitration agreement between the parties had got extinguished after 31-8-1998 i.e. the date of expiry of the extended period of the charter party. Therefore, we refrain from expressing any opinion on the scope and ambit of the arbitration clause though, prime facie, it appears to be quite widely worded.

19. *It is, no doubt, true that the general rule is that an offer is not accepted by mere silence on the part of the offeree, yet it does not mean that an acceptance always has to be given in so many words. Under certain circumstances, offeree's silence, coupled with his conduct, which takes the form of a positive act, may constitute an acceptance—an agreement sub silentio. Therefore, the terms of a contract between the parties can be proved not only by their words but also by their conduct.*

20. *In our view, the principle of sub silentio is clearly attracted in the present case. As noted above, after the extended period of charter party dated 6-5-1997 had come to an end on 31-8-1998 and the bids received pursuant to fresh invitation were pending finalisation, vide their letter dated 12-10-1998, the respondent had informed the appellant that they were agreeable to apply new rates for use of the vessel from 1-7-1998 provided all the nine vessels are used. However, on 31-10-1998, the appellant faxed IOC's message informing them of the extension of the existing coastal tanker fleet for the month of October 1998 at reduced rates viz. 80% of the charter party rates prevailing till 30-8-1998. On receipt of the said letter, the respondent vide their letter dated 5-11-1998 protested against the revision of the rates for the vessel not being considered under the new bid and stated in unequivocal terms that it was not possible for them to accept the proposal of the Oil Coordination Committee, communicated to them vide letter dated 12-10-1998. Yet again while responding to the appellant's fax dated 31-12-1998, whereby the respondent was required to sign a provisional charter party by 4-1-1999, vide their letter dated 4-1-1999, the respondent, pointed out to the appellant that usual practice is that pending finalisation of the new charter, the existing terms and conditions of the charter party continue to apply and, therefore, they were willing to sign the agreement as contemplated by the appellant based on the existing terms and conditions. It was suggested that an agreement may be signed between them for the period from 1-9-1998 until the matter was finally decided by the appellant under the tender, on the existing terms and conditions with the charter hire being provisionally paid on ad hoc basis at 90% of the rate which was prevailing under the existing charter party. As noted hereinabove, there was no response by the appellant to the respondent's letter dated 4-1-1999 though it appears that vide their letter of even date, the appellant did suggest to the respondent that as a token of formal agreement the said letter may be jointly signed by the charterers and the vessel owners. Admittedly, no such agreement was signed between the parties.*

Indubitably, there was no further exchange of correspondence between the parties during the year. Nevertheless, the appellant continued to use the vessel on hire with them under the time charter dated 6-5-1997. The conduct of the parties, as evidenced in the said correspondence and, in particular the appellant's silence on the respondent's letters dated 5-11-1998 and 4-1-1999, coupled with the fact that they continued to use the vessel, manifestly goes to show that except for the charter rate, there was no other dispute between the parties. They accepted the stand of the respondent sub silentio and thus, continued to bind themselves by other terms and conditions contained in the charter party dated 6-5-1997, which obviously included the arbitration clause.

21. *We may examine the issue from another angle, based on the respondent's stand that the charter party dated 6-5-1997 continues to be in vogue till the chartered vessel is redelivered. In this context, it would be appropriate to refer to Clauses 4 and 23 of the charter party dated 6-5-1997. These are in the following terms:*

> *"4. Delivery & Redelivery*
>
> *4.1. The vessel shall continue to be on charter to charterers in direct continuation from 2348 hrs 22-9-1996 to 30-6-1998. The vessel shall be redelivered by charterers to owners on dropping last outward pilot at any port on the west coast of India at charterers' option. Charterers to give owners 15 days' notice to probable port of redelivery.*
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> *4.2. Charterers to load last three cargoes clean and redeliver the vessel in clean condition.*
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> * * *
>
> *23. Final Voyage*
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> *Should the vessel be on her voyage towards the port of redelivery at the time the payment of hire is due, payment of hire shall be made for such length of time as owners and charterers may agree upon as being estimated time necessary to complete the voyage, less any disbursements made or expected to be made or expenses incurred or expected to be incurred by charterers for owners account and less the estimated amount of bunker fuel remaining at the termination of the voyage and when the vessel is redelivered any overpayment shall be refunded by the owners or underpayment paid by charterers. Notwithstanding the provisions of Clause 4 hereof should the vessel be upon voyage at the expiry of the period of this charter, charterers shall have the use of vessel at the same rate and conditions for such extended time as may be necessary for the completion of the round voyage on which she is engaged and her return to a port of redelivery as provided by the Charter."*

xxx *xxx* *xxx*

> ***23.*** *We are, therefore, of the opinion that though performance of the charter party agreement dated 6-5-1997 may have come to an end on 31-8-1998 but it was still in existence for some purposes viz. the effect of vessel's non-redelivery as per the prescribed mechanism and its continued use beyond the stipulated time and, thus, the arbitration clause in the said charter party operated in respect of these and other allied purposes. Therefore, the factual scenario in the instant case leads to an inescapable conclusion that notwithstanding the expiry of the period fixed in the time charter party dated 6-5-1997, the said charter party did not get extinguished, inter alia, for the purpose of determination of the disputes arising thereunder and the arbitration clause contained therein could be invoked by the respondent.*
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> ***24.*** *In view of the foregoing discussion, we do not find any infirmity in the view taken by the High Court that the charter party dated 6-5-1997 had not come to an end by efflux of time and it got extended by the conduct of the parties, warranting interference.*
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> ***25.*** *Having come to the conclusion that an arbitration agreement existed between the parties, the question which remains to be considered is whether the disputes between the parties should be referred to the same Arbitral Tribunal which had come to the conclusion that in the absence of any arbitration agreement it did not have jurisdiction to entertain and try the claims and counterclaims. We feel that it would be proper and expedient to constitute a fresh Arbitral Tribunal. Accordingly, we constitute an Arbitral Tribunal consisting of Justice M. Jagannadha Rao (Presiding Arbitrator), Justice D.P. Wadhwa and Justice S.N. Variava, former Judges of this Court to adjudicate upon the claim/counterclaim by the parties, subject to their consent and such terms and conditions as they may deem fit and proper. It goes without saying that the learned Tribunal shall deal with the matter uninfluenced by any observations in this order on the respective stands of the parties."*

15. The same view was taken by this Court in ***M/s S.K. Agencies (supra)*** where the Court was dealing with a Section 11(6) petition and one of the objections of the Respondent was that since the agreement dated 22.12.2018 expired by efflux of time on 23.07.2019 the arbitration agreement extinguished and any claim pertaining to a subsequent period was not referable to arbitration, being outside the scope of arbitration agreement. Petitioner contended that parties continued to work even after purported termination on 23.07.2019 and thus the previous agreement was

automatically renewed post the said date. In this context, reference was made to communications exchanged between the parties. Examining the legal issue and deciding the same in favour of the Petitioner, Court appointed an Arbitrator and referred the disputes to arbitration, leaving it open to the Respondent to raise objections of jurisdiction, arbitrability and maintainability of claims to be raised before the Arbitrator, in accordance with law. Relevant paragraphs are extracted hereunder for ease of reference:-

> *"**10.** At the outset, it is noted that in terms of the settled legal position, an arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability and unless the dispute is manifestly and/or ex facie non-arbitrable, the rule is to refer the dispute to arbitration. "When in doubt, do refer" says Vidya Drolia v. Durga Trading Corpn. I have also gone through the judgments cited by the respondent, the same does not derogate from this position.*
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> ***11.** In the present case, the factual background as narrated above clearly bring out that the parties are at loggerhead over the interpretation of clause 3 of the aforesaid agreements which provides for the operating term of the agreements. The petitioner's case is that as per contractual provision and as per the conduct of the parties there was no automatic termination of the agreements between the parties, and that the claims for damages and idling is justified. The respondent's case is that the agreement dated 22.12.2018 automatically expired on 24.07.2019 by virtue of clause 3 of the said agreement, and thus the claims raised by the petitioner for the subsequent period are outside the scope of the arbitration agreement.*
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> ***12.** The above controversy is liable to be adjudicated upon by a duly constituted arbitral tribunal. In these proceedings, it is beyond the province of this Court to interpret contractual provision/s and/or deal with aspects having a bearing on the merits of the respective case of the parties.*
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> ***13.** Also, the conduct of the parties would be a relevant factor in determining whether the agreements were extended. In Reva Electric Car Co. (P) Ltd. v. Green Mobil, the initial period under a MoU was expiring by 31.12.2007, the Supreme Court relied upon the correspondence between the parties and found that the MoU was extended by the petitioner till terminated on 25.09.2009, and referred the parties to arbitration even in respect of disputes arising after 31.12.2007. This aspect shall be considered by a duly constituted Arbitral Tribunal.*

14. *In any event, it is well settled that an arbitration agreement survives the termination of the main contract. In Reva Electric (supra), it has been held as under:*

> *"51. Section 16(1)(a) of the Arbitration and Conciliation Act, 1996 provides that an arbitration clause which forms part of the contract shall be treated as an agreement independent of the other terms of the contract. The plain meaning of the aforesaid clause would tend to show that even on the termination of the agreement/contract, the arbitration agreement would still survive. It also seems to be the view taken by this Court in Everest Holding Ltd. Accepting the submission of Ms. Ahmadi that the arbitration clause came to an end as the MoU came to an end by efflux of time on 31-12-2007 would lead to a very uncertain state of affairs, destroying the very efficacy of Section 16(1).*
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> *xxx xxx xxx*
>
> *54. Under Section 16(1), the legislature makes it clear that while considering any objection with respect to the existence or validity of the arbitration agreement, the arbitration clause which formed part of the contract, has to be treated as an agreement independent of the other terms of the contract. To ensure that there is no misunderstanding, Section 16(1)(b) further provides that even if the Arbitral Tribunal concludes that the contract is null and void, it should not result, as a matter of law, in an automatic invalidation of the arbitration clause. Section 16(1)(a) presumes the existence of a valid arbitration clause and mandates the same to be treated as an agreement independent of the other terms of the contract. By virtue of Section 16(1)(b), it continues to be enforceable notwithstanding a declaration of the contract being null and void. In view of the provisions contained in Section 16(1) of the Arbitration and Conciliation Act, 1996, it would not be possible to accept the submission of Ms. Ahmadi that with the termination of the MoU on 31-12-2007, the arbitration clause would also cease to exist."*

15. *The judgment of A.N. Traders (P) Ltd. v. Shriram Distribution Services (P) Ltd., relied upon by the respondent is clearly distinguishable inasmuch as firstly, the said judgment was rendered in a petition under Section 34 of the A&C Act; secondly, the relevant clause of the agreement in that case is materially different from the present case. The relevant clause in that case provided for 'commencing' and 'ending' of agreement, and specifically provided that 'extension' of agreement has to be in writing."*

16. In my considered view, case of the Petitioner is squarely covered by the aforesaid judgments. The Franchise Agreement was for a term of 5 years

and expired on 26.07.2021. However, documents on record indicate that Respondent continued to operate the Cafe at Hyderabad post the expiry of the agreement till the District Court passed an order on 26.11.2024 restraining the Respondent from using Petitioner's brand name Farzi Cafe and significantly, this fact is not disputed by the Respondent even today before this Court. E-mails on record evidence that parties were in regular communication reworking the royalty rates etc., as also for executing and signing an agreement to renew the terms of the Franchise Agreement. It was only on 09.08.2024 that Petitioner sent an e-mail asking the Respondent to discontinue the operations under the Franchise Agreement and settle the outstanding dues. There was no response to this e-mail by the Respondent. Respondent has not challenged the order of the District Court where a finding is rendered *albeit prima facie* that Respondent continued to operate the Cafe, even after expiry of the Franchise Agreement on 26.07.2021. Therefore, the disputes pertaining to invoices post this period when the Cafe was being operated, will be referable to arbitration in light of the law laid down by the Supreme Court in the aforesaid judgements. In ***M/s S.K. Agencies (supra),*** the Court has distinguished the judgment in ***A.N. Traders (supra),*** heavily relied upon by the Respondent herein, on the ground that the agreement in question was materially different inasmuch as it provided the period from which it 'commenced' and 'ended', as also the fact the judgment was deciding a petition under Section 34 of the 1996 Act after evidence was led before the Arbitrator and final award was rendered. Moreover, it can be seen from the judgment that the Court noticed that the Respondent had been unable to prove any exchange of letter or correspondences, which provided for continuation of arbitration agreement

for transactions post the expiry of the agreement. In any event, in light of the binding dictum of the Supreme Court in ***Bharat Petroleum (supra)*** and ***Reva Electric Car (supra),*** the judgments relied upon by the Respondent cannot be of any aid and the objection is rejected.

17. Coming to the objection with respect to lack of territorial jurisdiction of this Court, it would be pertinent to first refer to Clauses 15 and 16 of the Franchise Agreement, which are extracted hereunder for ease of reference:-

> *"15. GOVERNING LAW AND JURISDICTION:*
>
> *15.1 This Agreement shall be governed by, and construed in accordance with the laws of India. Subject to the dispute resolution Clause 16 (Dispute Resolution) set out below, the courts at New Delhi shall have exclusive jurisdiction in relation to all matters arising out of this Agreement.*
>
> *16. DISPUTE RESOLUTION*
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> *16.1 Any dispute arising out of or in connection with this Agreement which is not resolved within 30 (thirty) days after the service of a notice by a Party on the other, including any question regarding its existence, validity or termination, shall be referred to and finally resolved through arbitration under the "fast track procedure" of arbitration prescribed by Section 29B(3) of the Arbitration and Conciliation Act, 1996, read with Section 29A and other applicable provisions thereof. The venue of arbitration shall be New Delhi and the language of arbitration shall be English. The arbitral award shall be final and binding on the Parties. The Parties agree that the present arbitration agreement has been constituted, and the Parties hereby intend to be bound by the arbitration agreement so constituted, in compliance with Section 29B(1) of the Arbitration and Conciliation Act, 1996, and undertake to enter into such further agreements as may be required to give effect to the provisions hereof."*

18. Clause 16.1 is the arbitration clause wherein parties have agreed to designate Delhi as the venue of arbitration. There is no contrary *indicia* in the entire agreement and in fact even the general jurisdiction clause 15.1 fortifies the intent of the parties to confer exclusive jurisdiction on Courts at Delhi in relation to all matters arising out of the agreement. In ***BGS SGS***

Soma JV v. NHPC Limited, (2020) 4 SCC 234, the Supreme Court held that whenever there is designation of place of arbitration in an arbitration clause as being the venue of arbitration proceedings, the expression '*arbitration proceedings*' would make it clear that venue is really the seat of arbitral proceedings there being no contrary *indicia.* Relevant paragraphs are as follows:-

> *"**81.** Most recently, in Brahmani River Pellets, this Court in a domestic arbitration considered Clause 18 — which was the arbitration agreement between the parties — and which stated that arbitration shall be under Indian Arbitration and Conciliation Act, 1996, and the venue of arbitration shall be Bhubaneswar. After citing several judgments of this Court and then referring to Indus Mobile Distribution, the Court held : (Brahmani River Pellets case, SCC pp. 472-73, paras 18-19)*
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> > *"18. Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts. As held in Swastik, non-use of words like "exclusive jurisdiction", "only", "exclusive", "alone" is not decisive and does not make any material difference.*
> >
> > *19. When the parties have agreed to the have the "venue" of arbitration at Bhubaneshwar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act, the impugned order is liable to be set aside."*
>
> ***82.** On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of*

> *meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a "venue" and not the "seat" of the arbitral proceedings, would then conclusively show that such a clause designates a "seat" of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that "the venue", so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the "stated venue", which then becomes the "seat" for the purposes of arbitration."*

19. Broadly understood, Respondent does not dispute that parties agreed to designate Delhi as the venue of arbitral proceedings but the objections are that Delhi was not designated as seat of arbitration and that no cause of action has arisen at Delhi and neither of the parties have their office/registered office within the territorial boundaries of this Court. A similar issue came up before this Court in ***Samsung India Electronics Pvt. Ltd. v. Enn Enn Corp Limited, 2023 SCC OnLine Del 3827,*** where New Delhi was the designated venue for conduct of arbitration proceedings and the objection of the Respondent was that no part of cause of action had arisen at Delhi. Negating the contention, the Court held as follows:-

> *"**9.** The **respondent in its Reply** has taken the objection that this Court has no jurisdiction as no part of the cause of action in arose within the territorial jurisdiction of this Court. The dispute pertained to payment of lease rent for immoveable property situated in Noida, Uttar Pradesh i.e., Ground to 10th Floors of the Tower D, Logix Cyber Park, C-28 and 29, Sector-62, Noida-201301. The Sub-lease Deed was executed and registered in Noida, Uttar Pradesh. The respondent has its registered office in Mumbai, Maharashtra and principal place of business in Noida, Uttar Pradesh.*
>
> ***10.** It is claimed that New Delhi was only the venue for conducting the arbitration proceedings. It cannot be construed as the seat of arbitration. Clause 14 of the Sub-lease Agreement merely states that "arbitration will be conducted at New Delhi", thus, making New Delhi a venue for arbitration and it does not vest this Court with jurisdiction.*

xxx *xxx* *xxx*

14. The petitioner in its Rejoinder *has submitted that as per Clause 14 of the Sub-Lease Deed, the parties had agreed to confer exclusive jurisdiction onto the courts at New Delhi. As per the observations of various courts, the parties in commercial parlance use 'venue' and 'seat' interchangeably and the true intent of whether the reference to the "place" was meant to be "seat" or "venue", has to be derived from a reading of the Agreement. It is submitted that the clause provides for arbitration to be "conducted at New Delhi" which is an all-encompassing term as opposed to usage of words indicating New Delhi to be merely the venue, place or location of arbitration. Thus, by agreeing to conduct the proceedings at New Delhi, the parties had consciously chosen New Delhi to be the seat of the arbitration. The Ld. Counsel for the petitioner has placed reliance is placed on the case of BGS SGS Soma JV v. NHPC Limited, (2020) 4 SCC 234; Kush Raj Bhatia v. DLF Power and Services Limited, 2022 SCC OnLine Del 3309.*

xxx *xxx* *xxx*

19. *Essentially, the only objection to the appointment of the arbitrator taken by the Respondent is that this Court lacks territorial jurisdiction to entertain the petition under Section 11 of the A & C Act.* ***as*** *New Delhi was agreed to be the venue and not the seat of Arbitration.*

20. *To get the right perspective about jurisdiction, it would be pertinent to reproduce Clause 14 of the Sub-lease Agreement which provides for Arbitration, reads as under:*

> *"14.* ***Arbitration:***
>
> *All disputes and differences whatsoever between the Parties arising under or relating to this Sub Lease Deed shall be referred to a sole arbitrator to be appointed jointly by the Sub-Lessee and Sub-Lessor. The* ***arbitration will be conducted at New Delhi*** *in English language in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof".*

21. The first aspect *which needs to be delved upon is the distinction between the 'seat' and 'venue'. The Arbitration Law envisages two jurisdictions; one is the "place" where the arbitration may be conducted keeping the convenience of the parties in mind, and the other is the "seat" which determines the jurisdiction of the Courts where the parties may agitate any controversy arising out of the Arbitration.*

xxx *xxx* *xxx*

23. *The most significant judgment on this aspect is of Roger Shashoua v. Mukesh Sharma, (2009) EWHC 957, wherein the England and Wales High Court and held that the seat of arbitration has to have an exclusive jurisdiction over all proceedings that arise out of the arbitration,*

which came to be popularly referred to as the 'Shashoua Principle'. It propounded that whenever there is an express designation of a "venue" and no designation of any alternative place as the seat combined with a supranational body of Rules governing the arbitration and no other significant contrary indica, the inexorable conclusion is that the seated venue is actually the juridical seat of the arbitration proceeding. The position was further confirmed by the Indian leg of the case Roger Shashoua v. Mukesh Sharma, (2017) 14 SCC 722 wherein it has been held that the "seat" of the Arbitration would have an exclusive jurisdiction over all the proceedings that arise out of arbitration.

24. *The controversy about location and Seat has been arising frequently since the Act does not specifically use either word but uses the word "place". The Constitution Bench of the Supreme Court in the case of BALCO (supra) had made a reference to Section 2(1)(e) of the Act which defines the "Court." It was observed that the Section 2(1) (e) of the Act has to be construed keeping in view the provisions in Section 20 of the Act which gives recognition to party autonomy. It refers to a Court which would essentially be a court of the seat of arbitration process. The legislature has intentionally given jurisdiction to two courts i.e. court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the Agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes places, would be required to exercise supervisory control of the arbitration proceedings.*

25. *In Indus Mobile Distribution Pvt. Ltd. (supra) it was observed that conspectus of Section 2(1)(e) and 20 of the Act would show that the moment a seat is designated, it is akin to exclusive jurisdiction clause. In the said case, the Agreement provided that the seat of arbitration shall be Mumbai. Clause 19 of the Agreement further provided that jurisdiction exclusively vests in Mumbai Courts. It was held that the venue may have been agreed to be Mumbai, but that it was intended to be a seat, is further reinforced and indicated by the following Clause 19 which provided that the Mumbai Courts would be vested with the exclusive jurisdiction. It was thus held that the moment a seat is designated, it is akin to exclusive jurisdiction clause. It was further held that under the law of arbitration unlike CPC which applies to suits, reference to a seat is a concept by which a neutral venue can be chosen by the parties which may not in the classic sense, have jurisdiction i.e. no part of the cause of action may have arisen and neither would any of the provisions of Section 16 to 21 of CPC may be attracted.*

26. *In BGS SGS Soma (supra), following the Roger Shashoua case (supra), the Supreme Court had laid down the test for determination of the seat. It observed thus:*

"It will thus be seen that wherever there is an express designation of a "venue" and no designation of any alternative place as the "seat", combined with a supranational body of rules governing the arbitration, and no other significant contrary indicia, the inexorable conclusion is that the stated venue is actually the juridical seat of the arbitral proceeding."

xxx *xxx* *xxx*

32. *In BGS SGS Soma (supra), the Apex Court examined the Arbitration Clause which stated that the 'arbitration proceedings shall be held at New Delhi/Faridabad'. To ascertain the real intent of the parties and determine whether the same was indicated to be the seat, the Court gave special emphasis on the words 'arbitration proceedings' to hold that the usage of this phrase encompasses the arbitration proceedings as a whole. The connotation of 'arbitration proceedings' was read in conjunction with the words 'shall be held at' which signified the intention of the parties to anchor the proceedings at the decided place, which is not restricted to individual or particular hearings, and hence constituted the seat. This expression was contrasted with language such as 'tribunals are to meet or have witnesses, experts or the parties' where only hearings are to take place in the 'venue' which clearly leads to the conclusion that the venue is not the seat in such cases.* ***Hence, the stated venue is the seat of the arbitration unless there are clear indicators that the place named is a mere venue or a meeting place of convenience, and not the seat.*** *The Apex Court thus, held that the reference to place/venue in the Agreement ipso facto designated the seat* ***in absence of contrary indicia****.*

xxx *xxx* *xxx*

37. *The parties in the commercial parlance, use seat and venue interchangeably and the true sense of whether the reference to the place was meant to be 'seat' or 'venue' has to be derived from a reading of the Agreement in question. The Arbitration Agreement between the parties indicates that the parties did not merely intend New Delhi to be venue but the seat of arbitration as well. The Clause provides for arbitration to be "conducted" at New Delhi which is an all-encompassing term. The conduct of proceedings shall include all aspects of the arbitral proceedings, including and not limited to the appointment of the arbitrator. That the parties intended Delhi to be the Seat is also evident from the words "in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof" which clearly reflects the intention of the parties that Delhi was not intended to be merely the venue of the arbitration proceedings; rather the very fact that no other place was indicated as the seat of the arbitration was to be any other court. Hence, in absence of any contrary indicia, this court finds that New Delhi is the seat of the proceedings.*

38. *The* ***second argument*** *raised by the respondent with respect to the lack*

of jurisdiction of this court is that no part of the cause of action arose in the territorial jurisdiction of this Court.

39. *The Supreme Court in the case of Bharat Aluminum Company v. Kaiser Aluminum Technical Services, (2012) 9 SCC 552, observed that "subject-matter of the arbitration" cannot be confused with "subject-matter of the suit". Section 2(1)(c) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy.*

xxx *xxx* *xxx*

41. *In the case of Brahmani River Pellets (supra) the Apex court examined the Arbitration Clause of an Agreement and observed that under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause.*

42. *Hence, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 of the A&C Act which gives recognition to party autonomy. Accepting the arguments of the Respondent would be to render Section 20 of the A&C Act otiose. The legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action arises and the courts where the arbitration takes place. The Act envisages a situation where the parties agree to confer jurisdiction upon a court where no cause of action arises and which is neutral.*

43. *Further, in Brahmani River Pellets (supra), the courts further observed that, "Where the contract specifies the jurisdiction of the court at a particular place, only such court will have the jurisdiction to deal with the matter and parties intended to exclude all other courts. In the present case, the parties have agreed that the "venue" of arbitration shall be at Bhubaneswar. Considering the agreement of the parties having Bhubaneswar as the venue of arbitration, the intention of the parties is to exclude all other courts."*

44. *Hence, in Arbitration proceedings the parties by way of agreement, can confer jurisdiction upon a court where no cause of action arises, i.e. a neutral venue and the courts in Delhi can have jurisdiction even if no cause of action arises herein."*

20. Similar observations were made by this Court in ***Schlumberger Asia Service Ltd. and Others v. Oil & Natural Gas Corporation Limited, 2024 SCC OnLine Del 3205,*** where the Court was deciding an interplay between a general jurisdiction clause and an arbitration clause providing for arbitration to be held at the place where the contract was awarded. Relevant

paragraphs are as follows:-

> *"**23.** Pertinently, it has been asserted by the Claimant in Paragaphs-6 and 7 of its Statement of Claim that the Contract was signed at New Delhi. Interestingly, the respondent herein in the corresponding Paragraph of its Reply has stated that the contents of these paragraphs are correct, thereby admitting that the Contract was signed at New Delhi. The respondent has taken a somersault to claim that the Agreement was not signed at New Delhi in the Reply to the present Petition, which is factually incorrect.*
>
> ***24.** Thus, New Delhi was the venue and the seat of the Arbitration proceedings.*
>
> ***25.** The Co-ordinate Bench of this Court in Reliance Infrastructure Ltd. v. Madhyanchal Vidyut Vitran Nigam Ltd., 2023 SCC OnLine Del 4894 observed that a generic jurisdiction clause in an Agreement would not supersede or override the supervisory jurisdiction of the Courts, and held as under:—*
>
> > *"**32**. On a conspectus of the aforesaid judgments, the position of law that emerges is that when the contract contains an arbitration clause that specifies a "venue", thereby anchoring the arbitral proceedings thereto, then the said "venue" is really the "seat" of arbitration. In such a situation the courts having supervisory jurisdiction over the said "seat" shall exercise supervisory jurisdiction over the arbitral process, notwithstanding that the contract contains a clause seeking to confer "exclusive jurisdiction" on a different court.*
> >
> > ***33.** In the present case, the relevant clause in the LOA purporting to confer **"exclusive jurisdiction" is a generic clause, and does not specifically refer to arbitration proceedings.** For this reason, the same also does not serve as a "contrary indicia" to suggest that that Delhi is merely the "venue" and not the "seat" of Arbitration. As such, the same cannot be construed or applied so as to denude the jurisdiction of the Courts having jurisdiction over the "seat" of Arbitration."*
>
> ***26.** Therefore, where the "exclusive jurisdiction" is a generic clause and does not specifically refer to arbitration proceedings, it is the 'seat' or 'place' of arbitration that Court would have jurisdiction to entertain the application under Section 34 of the Act, 1996.*
>
> ***27.** It is already established that the Contract dated 28.07.2010 was signed at New Delhi and the same was the seat of Arbitration. Therefore, it is this Court which has the jurisdiction to entertain the present petition in accordance with Clause 28 of the Contract. The preliminary objection taken to the jurisdiction of this Court to entertain the present petition under Section 34 of the Act, is without merit and is hereby rejected."*

21. This judgment is also relevant for another reason that in the said case, as noted in the judgment, the contract in question was signed at New Delhi. In the instant case also, the Franchise Agreement indicates that the same was executed at New Delhi and therefore, this Court will have territorial jurisdiction to entertain this petition for multiple reasons, as aforementioned.

22. The preliminary objections raised by the Respondent are hereby rejected and the petition is allowed appointing Mr. Udit Seth, Advocate (Mobile No.9899495968) as the Sole Arbitrator to adjudicate the disputes between the parties. Fee of the Arbitrator shall be fixed as per Fourth Schedule of the 1996 Act.

23. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

24. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the parties are left open. It is left open to the Respondent to raise objection to the arbitrability of the disputes before the Arbitrator and if and when raised, the same shall be decided by the Arbitrator, uninfluenced by any observation in the present order and in accordance with law.

25. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

OCTOBER 13 , 2025*/YA*