

Arbitration Case No. 125 of 2011 Vs. M/S Natt Galary and Another.

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Court : Punjab and Haryana

Decided On : Feb-21-2013

Appellant : Arbitration Case No. 125 of 2011

Respondent : M/S Natt Galary and Another.

Judgement :

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH Arbitration Case No.125 of 2011 Date of Decision:

22. d February, 2013 M/s Swastic Subham and others ...Petitioners Versus M/s Natt Galary and another. ..Respondents CORAM: HON'BLE MR. JUSTICE A.K.SIKRI, CHIEF JUSTICE.

1. Whether Reporters of local papers may be allowed to see the judgment ?.

2. Whether to be referred to the Reporters or No.?.

3. Whether the judgment should be reported in the Digest?. Present : Mr. Vikas Sagar, Advocate, for the petitioners. Mr. Sunil Chadha, Advocate, for the respondents. **** A.K.SIKRI, CHIEF JUSTICE In this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act), the petitioners have alleged that a sum of ` 35,43,878-75 is due to it from the respondents which the respondents have not paid inspite of legal notice served. It is further stated that the claims in the aforesaid sum have arisen out of franchise agreement dated 15.05.2009 which contains arbitration clause and therefore, the

disputes are to be settled through arbitration. That is the reason for filing the present petition.

2. The following back ground in which the disputes have purportedly arisen between the parties and stated in the petition may be noted. The petitioner-company is a manufacturer of the product with brand name Poze. The respondent was appointed as Franchise for the sale of the aforesaid products of the petitioner from his show room i.e. Arbitration Case No.125 of 2011 -2- shop No.430-R, Model Town, Ludhiana (Punjab). Franchise agreement dated 15.05.2009 was entered into between the parties in this behalf.

3. The petitioner states that in terms of the aforesaid franchise agreement dated 15.05.2009, Minimum Guarantee (MG) was settled at ` 1,10,000/- and other conditions were also agreed. The respondent paid the security amount of ` 8,00,000/- to the petitioner on different dates. It was also required that the respondent would arrange the premises for sale of the franchise of the petitioner and would also furnish the same at his expense. The petitioner put the stocks i.e. belts, shirts, jackets, T-shirts, Ties etc. in the show room of the respondent. A total stock of ` 35,43,878.75 paise as on 30.06.2010 was transferred by the petitioner to the respondent. It is alleged by the petitioner that it suffered a cash loss of ` 5,88,292/- as the respondent failed to generate the business and therefore, the respondent was duly intimated through e-mail dated 17.03.2010. However, thereafter, the petitioner revised the minimum guarantee structure through letter dated 30.03.2010 with the hope that it would boost the sale in future. The respondent also accepted new arrangement. However, instead of showing increase, the sale started decreasing substantially. The average sales in the next financial year starting from April,2010 were reduced from ` 1,50,835/- to ` 72,839/- per month. The parties then agreed to close the show room. Respondent No.2 sent e-mail dated 13.07.2010 calling upon the Arbitration Case No.125 of 2011 -3- petitioner to send some executive to check all the stock and to take them back and refund the security of ` 8 lacs.

4. On 20.07.2010, the executives of the petitioner visited the respondents and handed over three post-dated cheques to the respondents for refund of the

security. It is alleged that though the respondents took these cheques but refused to allow the petitioner to audit and collect the stock. The petitioner thereafter sent legal notice dated 23.07.2010 asking the respondents to return the cheques to enable the petitioner to issue demand drafts in lieu thereof. The petitioner also called upon the respondents to supply F-form and sale-tax receipt dated 31.07.2010 and demanded ` 35,23,878.75 paise (along with interest @ 24% per annum). However, the respondents did not give any response not returned the cheques. In these circumstances, the petitioner instructed its bankers to stop the payments of these cheques vide letter dated 02.08.2012. The petitioner further alleges that instead of resolving of the issue, the respondents presented the cheques in the bank which were dishonoured and on that basis issued legal notice dated 17.09.2010 under Section 138 of the Negotiable Instruments Act, 1881 which was replied by the petitioner on 22.09.2010. The respondents, however, filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 in the trial Court on 13.10.2010.

5. According to the petitioner-company, when the respondents failed to pay substantial amount, it served notice dated 02.02.2011 calling upon the respondents to settle the disputes through sole Arbitration Case No.125 of 2011 - 4- arbitration in terms of clause 26 of the agreement dated 15.05.2009. As the respondents did not agree for arbitration, the petitioner company has filed the instant petition for appointment of the Arbitrator stating that it has to recover a sum of ` 35,23,878.75 paise (alongwith interest @ 24% per annum).

6. The respondents have filed the reply stating that the petition is mis-conceived and based on incomplete facts. The petitioner company is guilty of concealing true and material facts as it has not disclosed that it had filed a petition under Section 482 of the Code of Criminal Procedure bearing not CRM-M 118.of 2011 for quashing of complaint filed under Section 138 of the Negotiable Instruments Act, 1881 in which though initially ex-parte order was issued in favour of the petitioner company but ultimately the petitioner made the payment of ` 8 lacs through demand draft dated 13.07.2011 and cheque of ` 80,000/- dated 15.07.2011 towards interest on 15.07.2011. Therefore, no cause of action survives in favour of the petitioner.

7. The allegations that the respondents have not allowed the petitioner to lift the stocks are denied. It is stated that the entire stock was taken by the officials of the petitioner company in truck bearing Registration not UP-16-T-5478 on 19.07.2010. It is only thereafter the cheques in question were given.

8. From the aforesaid facts it transpires that as per the petitioner when the executives of the petitioner visited the respondents on 20.07.2010 it gave post dated cheques which were for the refund of Arbitration Case No.125 of 2011 -5- the security. However, the petitioner was not allowed to collect the stock which according to the petitioner was for a value of ` 35,23,878.75 paise. On the other hand, the respondents allege that the post dated cheques were given to the petitioner only after the petitioner had taken the delivery of the entire stock which was even dispatched in a truck. Thus there is a dispute as to whether the stocks were taken by the petitioner and only thereafter the petitioner gave the post-dated cheques or the petitioner was not allowed to take back the stocks on the termination of the agency. This is a dispute which needs to be adjudicated upon. This Court in a petition under Section 11 of the Act cannot go into the merits of this dispute.

9. In so far as the contentions of the respondents based on the filing of complaint under Section 138 of the Negotiable Instruments Act, 1881 and payment of that amount by the petitioner to the respondents alongwith interest in proceedings under Section 482 of the Code of Criminal Procedure is concerned, that may not come to rescue of the respondents warranting dismissal of this petition. The reason is simple. Once the cheques were given and the same were dishonoured, the respondents got the right to file complaint under Section 138 of the Negotiable Instruments Act, 1881. Against the summoning, the petitioner had filed petition under Section 482 of the Code of Criminal Procedure for quashing of the complaint. However, it shows that thereafter the petitioner made the payment through cheques and on that basis the complaint proceedings were quashed. Arbitration Case No.125 of 2011 -6- 10. I have gone through the orders dated 15.07.2011 passed by this Court in the said criminal case bearing not CRM-M 118.of 2011, relevant portion whereof reads as under:- Counsel for the petitioner has tendered a Draft of ` 8 lacs dated 13.7.2011 drawn on Oriental Bank of

Commerce, Ludhiana and a cheque of ` 80,000/- dated 15.7.2011 towards interest which has been accepted by the counsel for the respondents in Court towards full and final settlement of refund of security which was dishonored. Since the amount which was subject matter of the complaint has since been satisfied, this Court has no hesitation in quashing the proceedings initiated in complaint No.588 dated 11.10.2010 (Annexure P1) and the subsequent summoning order dated 13.10.2010 (Annexure P2).

11. It is clear that full and final settlement is related to the refund of security and the Court categorically observed that it was the subject matter of the complaint under Section 138 of the Negotiable Instruments Act, 1881 which was satisfied.

12. There is nothing on the record to show that all the disputes between the parties stood satisfied. If that is so, the respondents would have taken care of to get the same specifically recorded. Neither it is recorded in the order dated 15.07.2011 nor there is any other acknowledgment on this count by the petitioner. Therefore, it becomes clear that the petitioner made the payment in receipt of the cheques but Arbitration Case No.125 of 2011 -7- as far as its claim pertaining to the stock is concerned, there is no recording that it also stood settled. This dispute accordingly needs to be decided and as there is an arbitration agreement between the parties, it needs to be referred to the Arbitral Tribunal.

13. Accordingly, I allow this petition and appoint Honble Mr. Justice R.K.Nehru, a retired Judge of this Court as sole Arbitrator to adjudicate upon the disputes between the parties. Since the office of the petitioner is in Delhi and the respondent resides in Ludhiana, it would be convenient for both the parties if the arbitration proceedings are conducted at Chandigarh. Let the arbitration proceedings be conducted at Chandigarh. He shall charge the fee as per rules. (A.K.SIKRI) CHIEF JUSTICE 22 d February, 2013 'ravinder'

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