

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

Date of Reserve: 13.4.2009

Date of Order: April 20, 2009

OMP No. 280/2008

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20.4.2009

Percept D' Pvt. Ltd.

... Petitioner

Through: Mr. Rishi Agarwala, Advocate
Mr. Ankit Shah & Ms. Rohna Hamid, Advocates

Versus

The Fashion Design Council of India

... Respondent

Through: Mr. Anurag Sharma, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

This application/petition has been made under Section 9 of the Arbitration & Conciliation Act, 1996 by the petitioner submitting that the petitioner was entitled to recover a sum of Rs.5,19,13,389/- from the respondent. The respondent had no assets & valuables and therefore, in case, an award is passed in favour of the petitioner by the Arbitral Tribunal there would be no means or method to recover this amount from the respondent. The petitioner has prayed that the Court should direct the respondent to deposit an amount of Rs.5,19,13,389/- with this Court and restrain the respondent from withdrawing any amount from its bank

accounts. He also prayed that the respondent should be restrained from receiving the above amount from its debtors and the debtors be directed to deposit the amount with the Court.

2. A perusal of agreement relied upon by the petitioner shows that the respondent is a registered society under the Societies Registration Act and organizes fashion weeks/fashion events and works for promoting the interests of fashion industry. By an agreement dated 5th December 2005 the petitioner was appointed as sole and exclusive sales agent for “India Fashion Week” for two events to be conducted annually in each of the calendar years 2006, 2007 & 2008. It appears that the petitioner was to act as an agency to conduct “India Fashion Week” as per the terms and conditions given in the agreement. A perusal of the covenants would show that the petitioner was to secure sponsorship for the events and conduct event on the basis of budget drawn up in consultation with the respondent. The petitioner was to inform in writing to the respondent, four months prior to the date of holding of the event, about the sponsorships and was to furnish two bank guarantees to underwrite the payment of agreed sum to the respondent for each of the two events to be held every year. The petitioner was to hold the event and secure sponsorship within the proposed budget and in lieu of holding the event, the petitioner was to pay certain sum to the respondent. The time schedule for holding the event is also mentioned in the agreement.

3. It is contended by the petitioner that under the agreement petitioner was to be paid the rights commission in terms of clause 1.9 being 10% of the rights’

income. The first event was to be organized from 5th April, 2006 to 9th April, 2006. The petitioner contended that it worked for this event and secured sponsorships from Zee TV, G4 Securities, ARY, Radio City, DHL Express, Sixt Rental Cars and Securities Agencies apart from securing sponsorship from ITC and UB Group. The petitioner was able to raise a total sponsorship of Rs.17 crores from ITC and Rs. 12 crore from Kingfisher. However, the deal of Kingfisher could not fructify since at the time when the first event was to be held another event namely “Lakme Fashion Week” was also proposed to be held and due to this second event, “India Fashion Week” came under cloud. However, the petitioner in consultation with the respondent, despite fierce competition undertook activities to make it successful. After the second event from 5th to 9th September 2006, NOKIA, one of the sponsors, decided to terminate the sponsorship with the respondent and started sponsoring “Lakme Fashion Week”. Due to this, the petitioner had to take some extra steps which led to increase in the expenditure in respect of the events. The petitioner described in detail what were the additional expenditure incurred by it and it is stated that it incurred around Rs.244 lac of additional expenditure. The petitioner submitted that this decision to incur additional expenditure was taken by both the parties to improve the feasibility and status of the event of the respondent. However, the petitioner in view of the conduct of the respondent was constrained to terminate the agreement with the respondent and addressed letter dated 20.2.2007 to the respondent. Since, the third event was around the corner, the petitioner of its own withdrew its letter of 20th February, 2007 by writing a letter dated 1st March, 2007 and informed the respondent that the agreement between the parties shall remain

valid on certain terms and conditions. The respondent accepted the proposal given by the petitioner. It is alleged that despite accepting the proposal of the petitioner given in letter 1st March, 2007, the respondent abandoned the agreement by writing letter dated 11th April, 2007 levying wrongful charges against the petitioner only to avoid payment. The petitioner submitted that the petitioner was entitled to refund of Rs. 2,40,86,064/- spent by the petitioner to bridge the gap between expenditure and sponsorship amounts received while doing event in the year 2006 and the petitioner was also entitled to receive a balance implementation fee of Rs.38,90,660/- and commission to rights of Rs.1,15,92,996/- for the events to be held in the year 2007 and 2008. Thus, the petitioner claimed that it would be entitled to aggregate damages for breach of contract to the tune of Rs.5,19,13,389/- and wanted this Court to secure the petitioner by making the above prayers in the application under Section 9.

4. The respondent's contention is that the petitioner failed to furnish the bank guarantees within the specified time limits for the event in March, 2007. The respondent had also sent letter dated 23rd October, 2006 reminding the petitioner that it had failed to collect sufficient sponsorship to pay to the respondent the agreed sum of Rs.75 lac for "India Fashion Week" event to be held between 5th April, 2006 and 9th April, 2006. The respondent clearly notified to the petitioner that respondent might invoke the bank guarantee furnished by the petitioner in lieu of the first event. Vide letter dated 29th August, 2006 the petitioner had sent bills of first event to the respondent. The respondent had informed the petitioner it had exceeded the

amount mutually agreed upon between the parties while formulating the budget. The additional costs, if any, allegedly incurred by the petitioner was incurred without authority of the respondent and contrary to the contract between the parties. The amount as claimed by the petitioner in the application under Section 9 was not at all recoverable from the respondent. The application under Section 9 was liable to be dismissed.

5. In order to claim relief under Section 9 of the Arbitration & Conciliation Act, 1996 the petitioner has to show that the case of the petitioner was covered within the scope of Section 9. There is no doubt that this Court could pass an interim order to secure an amount in arbitration matter but such an order for securing amount can be passed by the Court only where the amount payable can be worked out with certainty and the petitioner has a good prima facie case. In the present case, the petitioner during arbitration intends to seek damages from the respondent for breach of contract and a claim that he had incurred extra expenditure on the event and was entitled to reimbursement of extra expenditure. The contract however, shows that the petitioner was to secure and generate sponsorship of its own and was to pay to the respondent, a substantial amount after meeting the entire expenses of the event and its own overheads and profits. The contract required petitioner to give a bank guarantee to the respondent to ensure this payment. Therefore, it cannot be said that prima facie petitioner had a case of recovery of extra expenditure allegedly incurred by the petitioner. The agreement also shows that if the expenditure on the event was to exceed the budget amount, then the

consent of both the parties was required where the amount exceeded more than Rs.1 lac. No such consent letter has been placed on record by the petitioner despite the fact that the budget, according to the petitioner, had increased by more than Rs.2,40,00,000/.

6. Whether or not the petitioner was entitled to any amount is to be decided by the Arbitrator. It is not appropriate for this Court to go beyond observing that prima facie no ground was made out by the petitioner for securing this amount. Suffice it to say that it is not a case where the Court should ask the respondent to give security for the alleged damages which the petitioner is likely to claim before the Arbitrator. I find no force in the application. The application is hereby dismissed.

April 20, 2009
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SHIV NARAYAN DHINGRA, J.