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M/S MARUTI AGENCIES

Through: Mr. S.C. Kalra, Advocate for the
Petitioner.

M/S ADIDAS INDIA MARKETING PRIVATE LTD.

.. Respondents

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. Petition under Section 34 of the Arbitration Act, 1996 is preferred with respect to the arbitral award dated 25th June, 2009. The respondent/claimant had made a claim against the petitioner for recovery of Rs.42,67,495/- along with pendente lite and future interest. The petitioner was the distributor for Delhi region for the sports shoes, apparels & accessories etc. of the respondent and on the terms & conditions contained in a Distribution Agreement dated 1st October, 2003 replaced by another agreement dated 14th March, 2005. The petitioner showed an inclination to terminate the said arrangement and the aforesaid amounts were claimed by the respondent as the amounts due from the petitioner on taking complete accounts of the transactions between the parties. The arbitrator has made an award of Rs.20,29,939/- in favour of the

respondent and against the petitioner. The respondent has not been awarded any pendente lite interest or costs of arbitration. The petitioner has been given two months' time to pay the awarded amount failing which it has been held liable for future interest at 18% on the awarded amount.

2. On a perusal of the arbitral award and the grounds taken with respect thereto in the OMP, no ground under Section 34 of the Act was felt to have been made out. The findings of the arbitrator are factual and on the basis of accounts between the parties and the same do not permit any interference under Section 34 of the Act and none of the findings can be said to be contrary to any substantive law or to the agreement between the parties.

3. The counsel for the petitioner has been heard. He has made submissions under three heads. Firstly, it is contended that the arbitrator has not allowed credit to the petitioner of the amount realized by the respondent on encashment of the bank guarantee for Rs.5 lacs furnished by the petitioner in favour of the respondent. Attention of the counsel has been drawn to the running Page 55 to 56 of the award where the arbitrator has dealt exhaustively with respect to the said contention of the petitioner made before the arbitrator also and has held that credit of the said sum of Rs.5 lacs has been given. The only contention of the counsel for the petitioner is that since the encashment of the bank guarantee was on a date after the accounts had been prepared, the credit could not have been given. However, the arbitrator on going through the accounts has held that the respondent had while preparing the accounts given the credit for the said amount. The counsel in spite of enquiry is unable to show from any document or pleadings on record that the credit for

the said sum of Rs.5 lacs does not stand given.

4. The counsel for the petitioner then read out the findings in the award under Issue No.3. The arbitrator has given credit to the respondent in the sum of Rs.10,43,398/- towards goods returned by the petitioner to the respondent. The counsel for the petitioner contends that the claim of the petitioner on this account was in the sum of approximately Rs.12 lacs. It is contended that the arbitrator has while giving credit of the value of the goods, not given credit of the Sales Tax paid on the earlier sale of the said goods by the respondent to the petitioner.

5. Again, it is not as if the award is oblivious of the said contention of the petitioner. The arbitrator has on running Page 51 of the award held the petitioner not entitled to claim Sales Tax paid on the value of the returned goods for the reason of the transactions having been completed and the subsequent return of the goods by the petitioner to the respondent being allowed not because of any terms of the contract but on account of the respondent having waived the right not to accept the said goods and by its implied conduct having agreed to accept back the said goods. The counsel for the petitioner has contended that as per policy, the Sales Tax paid on the said transaction ought to also have been refunded/given credit to the petitioner. However, no policy in this regard is cited. On enquiry, it is urged that the same is as per the Sales Tax laws. Neither any law is shown nor am I willing to accept that there would be any such provision. The claim if any of the petitioner would be for refund of the tax if any paid by the petitioner and cannot be against the respondent.

6. The counsel for the petitioner has lastly referred to the findings of the arbitrator under Issue No.6. The same related to the claim of the petitioner for credit adjustment of Rs.2,93,833/- on behalf of business between the respondent and M/s Maruti Clothing Company, in which name the proprietor of the petitioner is also stated to be carrying on business. The arbitrator has on perusal of the accounts between the parties held the said amount to be not due to the petitioner or to M/s Maruti Clothing Company. The counsel for the petitioner has contended that the reliance placed by the arbitrator on the accounts as on 31st March, 2007, not including the said amount, is wrong in as much as those accounts were of the petitioner i.e. M/s Maruti Agencies and not of M/s Maruti Clothing Company.

7. I am afraid such mistakes even if any in the award are not open for interference by the court. The arbitrator is a private forum chosen by the parties for settlement of their disputes and the parties are bound by his findings whether right or wrong. The argument raised is with respect to appreciation of evidence and it is settled law that the court will not interfere in wrong appreciation of evidence by the Arbitral Tribunal.

8. Resultantly, no ground for issuing notice of the petition is made out.

The petition is dismissed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**September 23rd, 2009
pp**