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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ O.M.P. 808/2011

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Judgment dated 04.11.2011

BC INDIA PRIVATE INVESTORS & ANR Petitioners
Through : Mr.C.A. Sundaram, Sr. Advocate and
Mr.Sanjeev Puri, Sr. Adv. with
Mr.P. Billimoria, Ms. Padma Priya,
Mr. Manpreet Lamba, Mr. Zafar Inayat
and Mr. Sidharth Bania, Advs.

versus

LILLIPUT KIDSWEAR LIMITED & ORS Respondents
Through : Mr.Neeraj Kishan Kaul, Sr. Advocate
with Mr.Dinesh Agnani, Sr. Adv. with
Mr.Vijay Agarwal, Ms.Shally Bhasin,
Ms.Misha Rohtagi and Mr. Nikhil
Rohtagi, Advs.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

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

G.S.SISTANI, J. (ORAL)

1. This is a petition filed under Section 9 of the Arbitration & Conciliation Act, by the petitioners, with the following prayers:

“(i) Restrain the respondents, their associates, affiliates, employees, agents, representatives, and/or any one claiming under them from obstructing, in any manner whatsoever, the implementation of any or all the decisions taken by the Board of the respondent company in its

meeting dated September 28, 2011 in their entirety in letter and spirit, including the decision to appoint M/s.Deloitte Haskins to conduct a forensic investigation/ audit of the financial statements of the respondent company and to ensure that M/s.Deloitte Haskins receives full co-operation and access to all books and records of the respondent company as necessary;

- (ii) Restrain the respondents, their associates, affiliates, servants, employees, agents, representatives, and/or anyone claiming under them, from directly or indirectly violating the rights available to the petitioners under the Shareholders' Agreement, and in particular taking any decision on the "reserved matters" provided for in Clause 9 of the said Agreement without the prior consent of Petitioner No.1;
- (iii) Direct respondents to appoint any of the 'Big Four' audit firms (other than M/s.Deloitte Haskins and M/s.S.R. Batliboi or their affiliates), as required under Clause 14.4 of the Shareholders' Agreement, as statutory auditor of the Respondent company, in place of M/s.S.R. Batliboi who has registered, and to ensure that the new statutory auditor receives full co-operation and access to all books and records of the respondent company as necessary;
- (iv) Direct the respondents to submit an undertaking to this Hon'ble Court to the effect that the Respondents, their associates, affiliates, servants, employees, agents, representatives, and/or anyone claiming under them, have and shall preserve books of accounts, records, vouchers, inventories,

sales records and all related and relevant documents and records of the respondent company which have been maintained by the Respondent company for the financial years ending March 31, 2008; March 31, 2009; March 31, 2010; March 31, 2011; and till date”

2. In another petition (OMP.No.742/2011) filed by the respondent herein under Section 9 of the Arbitration & Conciliation Act, this court had disposed of the matter on 02.11.2011 and the following order was passed:

“1. Petitioners have filed the present petition under Section 9 of Arbitration and Conciliation Act, *inter alia*, praying for orders to restrain respondents from interfering in the business and working of petitioner no.1.

2. While issuing notice in this matter, this Court had restrained respondents from directly or indirectly acting contrary to the minutes of the Board Meeting dated 28.9.2011 and further restrained from giving adverse publicity of petitioner no.1. Petitioners had also prayed that respondents be restrained from selling, alienating, transferring or creating third party interest in any manner with regard to shares of petitioner no.1 company in view of Clause 5.1 of the Shareholders Agreement dated 4.5.2010. The court deferred orders on this prayer till service of the respondents is effected.

3. After some hearing in the matter, it is agreed between counsel for the parties that 2nd para at page 3 of the order dated 3.10.2011 be modified to the extent that the order should be made applicable to both the

parties. Order is modified accordingly as under:

“All parties are restrained, directly or indirectly, from acting contrary to the minutes of the Board Meeting dated 28.09.2011 and they are further restrained from giving adverse publicity of petitioner No.1.”

4. It is also agreed between counsel for the parties that parties will not sell, alienate, transfer or create any third party interest in any manner in respect of shares of petitioner no.1 company in Violation of Clauses 5.1 and 5.1A of Share Holders Agreement dated 4.5.2010. It is further agreed that this order may be modified at the instance of either of the parties by the learned Arbitrator to be appointed.

5. As agreed above, present petition stands disposed of in above terms."

3. In the Board meeting held on 28.09.2011 it was *inter alia* also agreed that M/s.S.R. Batliboi & Company should be asked to re-audit the accounts and an independent agency be also appointed.

4. Today after some hearing in the matter, it is agreed between counsel for the parties that the present petition may be disposed of with the following directions:

(A) M/s.S.R. Batliboi & Company, who vide letter dated 01.10.2011 had expressed their inability to act as an auditor, as relevant documents were not provided to them, be requested to re-consider their communication dated 01.10.2011.

(B) Both the parties – petitioners and respondents – will request M/s.S.R. Batliboi & Company to re-consider their communication dated 01.10.2011 and carry out

the terms of the Board resolution.

- (C) Respondents agree to give independent access to M/s.S.R. Batliboi & Company to comply with the terms of the resolution passed in the meeting held on 28.09.2011.
- (D) It is agreed that instead of M/s.Deloitte Haskins, M/s.S.S. Kothari Mehta and Company will be appointed to carry out independent audit. Both the parties would give their points of reference to M/s.S.S. Kothari Mehta and Company. M/s.S.S. Kothari Mehta and Company will carry out independent audit of all points of reference, which are necessary, in accordance with law.
- (E) Both the parties undertake to assist M/s.S.R. Batliboi & Company and M/s.S.S. Kothari Mehta and Company.
- (F) Parties are also agreeable for resolving all their disputes and differences, claims and counter claims by appointment of an arbitral tribunal. Petitioners have suggested the name of Justice Mukul Mudgal, former Chief Justice of Punjab & Haryana High Court. Respondent has suggested the name of Justice R.C. Chopra, former Judge of this court. Both the parties agree that the court should appoint a former Judge of the Supreme Court of India, as the presiding Arbitrator. Accordingly, Justice H.S. Bedi, former Judge of Supreme Court of India, is appointed as the Presiding Arbitrator. It is agreed that venue of arbitration will be at Delhi and the arbitrators will fix their own fee.

5. Present petition is disposed of, in above agreed terms.

NOVEMBER 04, 2011

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G.S.SISTANI,J