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

\+ FAO(OS) (COMM) 75/2017

GLOBAL FRAGRANCES PVT LTD & ANR ..... Appellants
Through: Mr.Vikas Mahajan, Advocate

versus

REEBOK INDIA COMPANY ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

% 10.04.2017

CM Nos.13339/2017 and 13342/2017 (Exemptions)

Exemption allowed, subject to all just exceptions.

CM Nos. 13339/2017 and 13341/2017 (for condonation of delay) and FAO(OS) Comm 75/2017

The appellants impugn the order dated 21st November, 2016, whereby OMP (Comm) No.501/2016 filed by them has been dismissed and the award dated 6th August, 2016 has been upheld.

2. There is delay of 35 days in filing and 20 days in re-filing of the appeal. However, before issuing notice on the said applications, we deem it appropriate to first examine the appeal on merits.

3. The appellants had entered into a manufacturing agreement dated 2nd July, 2011 for manufacturing and supply of personal care products to the respondent company. Subsequently, Memorandum of Understanding dated 3rd December, 2012 was executed. Thereafter,

disputes arose and the matter was referred to Arbitration. The Arbitrator vide award dated 6th August, 2016, has held that the appellant was liable to refund payments made amounting to Rs.89,20,379/- and Rs.50 lacs (Rs. 1,39, 20,379/-) along with interest of Rs.13,47,000/- calculated @ 18% per annum w.e.f. 3.12.2012 upto 15.4.2014 and *pendente lite* and future interest from the date of award till realisation.

4. Learned counsel for the appellant submits that the arbitrator and the learned Single Judge have not properly appreciated clause/paragraph 8 of the Memorandum of Understanding dated 3rd April, 2012 which had stipulated that the respondent would first issue purchase orders to the appellant for supply of finished goods.

5. Clauses 1 to 4 of the Memorandum of Understanding dated 3rd December, 2012, had stipulated as under:

> *" (1) GFPL has represented to RIC that it holds an inventory of finished goods worth Rs.82,85,696/- (Rupees eight (sic.)two lakh eighty five thousand six hundred and ninety six only) which were manufactured for supply to RIC under the Agreement. The Parties agree that GFPL shall supply all finished goods lying with it to RIC not later than December 05, 2012.*
>
> *(2) The Parties acknowledge that RIC has advanced an amount of Rs.89,20,379/- (Rupees eighty nine lakh twenty thousand three hundred and seventy nine only) to GFPL. The Parties agree that upon the delivery of the finished goods specified in (1) above to RIC such advance amount shall be*

> *adjusted against the finished goods but only to the extent of the value of such finished goods.*
>
> *(3) GFPL has represented to RIC that it holds raw materials worth Rs.59,16,851/- (Rupees Fifty nine lakh sixteen thousand eight hundred and fifty one only) which were procured for manufacturing personal care products for RIC under the Agreement. The Parties acknowledge that in order to facilitate manufacture of products from such raw materials, RIC has paid an advance of Rs.50,00,000/- (Rupees fifty lakh only) to GFPL on December 01,2012.*
>
> *(4) GFPL shall manufacture finished goods from such raw materials and deliver all such finished goods to RIC not later than January 10, 2013."*

6. The paragraphs/clauses record that the appellants had claimed that they had inventory of finished goods of Rs.82,85,696/- and raw materials worth Rs.59,16,851/-. In view of the said representation, the respondent had made advance payment of Rs.89,29,379/- towards finished goods to be adjusted against the finished goods to be supplied but only to the extent of value of the finished goods. The supply was to be made not later than 5th December, 2012. Similarly, Rs.50 lacs was paid to the appellant in order to facilitate manufacturing of the products from the raw material held by it. The appellant was to manufacture finished goods from such raw materials and make delivery to the respondent not later than 10th January, 2013.

7. Learned counsel for the appellant has not been able to controvert

the factual position that the supplies in terms of paragraphs/clauses 1 to 4 were never made. The appellant relies on clause/paragraph 8 of the Memorandum of Understanding, which reads as under:

> *" RIC shall issue purchase orders to GFPL for the supply of : (i) the finished goods mentioned in (1) above and (ii) the finished goods to be manufactured from the raw materials as mentioned in (3) above."*

8. The award and impugned order have referred to the contradictory contention raised by the appellant. The Managing Director of the appellant, namely, Somesh Choudhary had appeared and deposed as RW-1 before the Arbitrator and had claimed that he had called upon the respondent to pay the outstanding and take delivery of the goods from his factory but the outstanding amount was not paid. Somesh Choudhary had also admitted that the entire goods had not been manufactured in terms of the Memorandum of Understanding. The award mentions and refers to the *e-mail* dated 14.12.2012, relied upon by the appellant. The said *e-mail* records that the goods had been despatched twice to the warehouse but were returned without any intimation or information from the respondent.

9. We fail to understand, in view of different versions, how an argument can be raised that the respondent had committed a breach of Clause 8 and, therefore, no amount was due and payable. The view taken by the Arbitrator and upheld in the impugned order is reasonable, just and plausible.

10. The Memorandum of Understanding had also stipulated that the manufacturing agreement shall stand terminated upon the date of

delivery of the finished goods or on 10th January, 2013, whichever was earlier with no requirement of written notices to be given to either party.

11. The appellant's contentions have no merit and accordingly we are not inclined to issue any notice on the applications seeking condonation of delay. The applications and, as a sequitur, the appeal will be treated as dismissed.

SANJIV KHANNA, J

ANU MALHOTRA, J

APRIL 10, 2017/sv