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

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DECIDED ON: 17.11.2017

+ **FAO (OS) (COMM) 198/2017, CM APPL.41575-41576/2017**

SOLAR SPORTSWEAR

..... Appellant

Through: Mr. Jay Savla with Ms. Shilpi
Chowdhary, Advocates.

versus

AERO CLUB

..... Respondent

Through: Mr. Jayant Bhushan, Sr.
Advocate with Mr. Mandeep Singh
Vinaik and Ms. Anjali Sharma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S.RAVINDRA BHAT, J. (ORAL)

1. This appeal is directed against a judgment and order of the learned Single Judge refusing to intervene in a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as “the Act”).

2. The dispute - which was referred to the Arbitral Tribunal - pertains to the claims and counter claims made by the parties pursuant to the termination of a franchisee agreement in respect of five shops located at Mumbai (that was entered into on 10.02.2007). The claimant/respondent

(Aero Club) made several claims; for facility of reference, the Single Judge extracted them as follows: -

<i>(a) Value of the unsold stock as on 31.08.2009.</i>	<i>Rs.67, 58,000/-</i>
<i>(b) Towards vouchers, unrealised credit card sales and unaccounted stocks.</i>	<i>Rs.18,70,681/-</i>
<i>(c) For costs incurred in fixing, fitting and decorating the showroom</i>	<i>Rs.6,04,104/-</i>
<i>Total</i>	<i>Rs.92,32,785/-</i>
<i>Less: Encashed bank guarantee</i>	<i>Rs.40,00,000/-</i>
<i>Balance:</i>	<i>Rs.52,32,785/-</i>

3. The appellant/Solar Sportswear, i.e., the franchisee resisted the claim and in turn preferred counter claim for the sum of ₹31,99,345/-. The Award finally granted a sum of ₹21,79,332/-. In doing so, the Tribunal took note of the fact that the value of the unsold stock as on the date of termination, i.e., 31.08.2009 was ₹67,58,000/-. On an application of the formula indicated in Clause 4 (e), the Tribunal concluded that a sum of ₹46,37,217/- was payable by the franchisee to Aero Club. Besides this, a further sum of ₹13,75,395/- and a sum of ₹1,66,720/- were also directed in the Award.

4. The appellant's petition under Section 34 impugned the Award on the ground that the sum of ₹46,37,217/- was contrary to the contract and that on a proper interpretation of the stipulation, i.e., Clause 4 (e) that amount could not have been arrived at. Furthermore, the appellant urged

that the Award to the extent of ₹13,75,395/- was untenable because the sum was never claimed. Upon an independent analysis of the terms of the contract and after considering the submissions, the Single Judge was of the opinion that the Award did not call for interference under Section 34.

5. Mr. Jay Savla, learned counsel urges that the interpretation of Clause 4 (e) which stipulated the retail price (RP) as opposed to maximum retail price (MRP) - a concept inclusive of taxes, amounts to misinterpretation of the contract and, therefore, calls for interference with the Award under Section 28 (3) of the Act. It is also urged to the extent that the Tribunal's Award of ₹13,75,395/- is not tenable as such a claim was unfounded and never made.

6. This Court is of the opinion that there is no merit in either contention. The findings of facts rendered by the Tribunal show that as against the agreed MRP, the appellant had in fact sold the goods - after termination of franchisee agreement at vastly discounted value of ₹33,19,222/-. The insistence of the appellant that Clause 4 (e) have been adhered in the letter and spirit in the opinion of the Court is not warranted because had the appellant in fact sold the goods immediately and mitigated damages or if the goods in fact were taken back by the owner, i.e., Aero Club, the position would have been different. However, it chose to sell them much below the MRP. Besides, the formula agreed to by the parties was applicable for the duration of the contract, whereas in the present case, the goods were sold after the termination of the contract. In these circumstances, the manner of its interpretation as a tool by the Arbitrator to discern what the approximate market value could have been

as on the date of the termination, in the opinion of the Court is neither illegal nor contrary to the contract. So far as the other issue with respect to the Award of ₹13,75,395/- is concerned, the Court is of the opinion that here too, the argument is unsustainable; the Arbitrator upon the detailed factual analysis found that during the subsistence of the contract stocks had been sold but not accounted for. These were to the extent of ₹13,75,395/-. We also noticed that during the proceedings, the appellant had been questioned on this aspect specifically.

7. For the above reasons, the Court is of the opinion that there is no merit in the appeal; the same is accordingly dismissed along with pending applications.

S. RAVINDRA BHAT
(JUDGE)

SANJEEV SACHDEVA
(JUDGE)

NOVEMBER 17, 2017
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