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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (COMM) 148/2018 and IA No. 4758/2018 & IA No. 4759/2018**

C.A. RAMESH BABU

..... Petitioner

Through: Ms Joseph Aristotle S.,
Advocate.

versus

REEBOK INDIA COMPANY

..... Respondent

Through: Mr Abhinav Vasisth, Senior
Advocate with Mr Niraj Singh,
Mr Alok Srivastav, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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11.04.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning the arbitral award dated 31.12.2017 (hereafter 'the impugned award') delivered by the Arbitral Tribunal constituted of a sole arbitrator, Justice V.B Gupta (Retired), (hereafter 'the Arbitral Tribunal').

2. The impugned award was rendered in the context of disputes that have arisen between the parties in respect of the 'Franchise Agreement' dated 17.08.2006 (hereafter 'the Agreement') and the 'Settlement Agreement' dated 27.02.2013 (hereafter 'the Settlement Agreement').

3. The disputes between the parties relate to the price payable by the petitioner for the goods supplied by the respondent (Reebok). Reebok claimed that certain amounts were due to it under the Franchise Agreement and in order to settle the same, the parties had entered into the Settlement Agreement, in terms of which the parties had agreed that an amount of ₹1,18,73,851/- was payable by the petitioner to Reebok .

4. The principal controversy raised before the Arbitral Tribunal was in respect of the validity of the Settlement Agreement as the petitioner claimed that it was without consideration and free consent. Reebok contested the aforesaid claim and insisted that the Settlement Agreement was entered into by the petitioner with free consent and with the view to settle the dues owed by the petitioner. The Arbitral Tribunal found that the petitioner was unable to discharge the burden of establishing that the Settlement Agreement was invalid and accordingly entered an award in favour of Reebok for sum of ₹1,18,73,851/- along with interest at the rate of 9% per annum from 27.02.2013 till realization. The counter claim raised by the petitioner was rejected. The petitioner has filed the present petition challenging the impugned award principally on the ground that the Arbitral Tribunal – formed to adjudicate the disputes referred to the Arbitral Tribunal – failed to consider the disputes raised by the petitioner in respect of the Agreement. It is also contended that the Arbitral Tribunal had grossly erred in not appreciating that the Settlement Agreement was without any consideration as observed by this Court in the order dated 22.09.2016 passed in CS(COMM) 245/2016 captioned *M/s Reebok India Company v. C.A. Ramesh Babu*.

5. Briefly stated, the relevant facts necessary to address the aforesaid controversy are as under:-

5.1 Reebok International Ltd. is a company having its principal office in Lancaster, England and is, *inter alia*, engaged in manufacturing, marketing, distribution and sale of footwear, apparel, bags, accessories and other related products. Reebok (the respondent herein) is a company incorporated in India and has been appointed as an exclusive distributor for products sold under various trademarks owned by the Reebok Group (Reebok Trademarks).

5.2 On 17.08.2006, the petitioner and Reebok entered into the Agreement, whereby the petitioner was appointed as a retailer of the sports apparel and footwear, apparel, bags, sportswear accessories or any other related products bearing the Reebok trademarks. In terms of the Agreement, the petitioner was appointed as a Franchisee to operate retail outlet at the premises bearing no. 68/150/04, 9th Main Road, 3rd Block, Jayanagar, Bangalore in the name and style 'M/s Balaji Enterprises'.

5.3 In terms of the Agreement, Reebok agreed to make available the specified products for purchase by the petitioner in accordance with the Agreement. Reebok also agreed to provide marketing information, technical support with regard to visual merchandising as well as advise of its Architect with regard to the design of the retail outlet. The petitioner agreed to market the specified products and further agreed to refrain from stocking or displaying, selling any other products of any other products. Thus, the petitioner was to purchase the specified

products from Reebok on a principal to principal basis.

5.4 The said arrangement continued till Reebok sent a communication to the petitioner stating that the Agreement would cease on 31.12.2012 and the business would be continued under the New Module. It is stated that initially the petitioner wanted to continue with the New Module, however, by a letter dated 02.09.2012, the petitioner expressed his desire to terminate the franchise arrangement with Reebok.

5.5 Reebok claimed that the petitioner owed certain sums for the product on account of goods supplied under the business arrangement between the parties. It is stated that in order to finalise their settlement, the parties entered into an amicable settlement on 27.02.2013 (recorded in the Settlement Agreement), whereby the petitioner agreed to pay a sum of ₹1,18,73,851/- to Reebok in discharge of its liability. Reebok claimed that since the petitioner was facing financial issues, the parties agreed that the amount due would be paid in instalments.

5.6 Since, the petitioner did not pay the amount as agreed under the Settlement Agreement and sought to dispute the same, Reebok filed a suit before this Court being CS(COMM) 245/2016 praying for a decree for a sum of ₹2,06,60,230.74/- alongwith *pendente lite* and future interest at the rate of 24% per annum. The aforesaid amount included the principal amount of ₹1,18,73,851/- as agreed under the Settlement Agreement as well as the interest till the date of the suit which was computed at ₹87,86,649.74/-.

5.7 In the aforementioned suit, the petitioner filed an application

under Section 8 of the Act which was initially resisted by Reebok. The said suit and the application was disposed of by an order dated 22.09.2016, passed with the consent of parties, whereby the disputes which were subject matter of the suit as well as other disputes between the parties arising out of or in relation to the Agreement and the Settlement Agreement were referred to the sole arbitrator appointed with the consent of the parties.

5.8 Before the Arbitral Tribunal, Reebok filed a Statement of Claims claiming (i) a sum of ₹2,23,04,622/-; (ii) *pendente lite* interest at the rate of 24% per annum till the realisation of the said amount; and (iii) and costs of arbitration proceedings.

5.9 The petitioner filed its objections to the statement of claim and also filed a counter claim for a sum of ₹47,95,890/- along with interest at the rate of 24% per annum. The aforesaid amount comprised of (a) ₹9,25,000/- on account of loss of rent computed on the basis of ₹25,000/- per month from 01.04.2013 to 30.04.2016 ; (b) ₹3,70,000/- security charges from 01.04.2013 to 30.04.2016 at the rate of ₹10,000/- per month; (c) ₹19,36,398/- on account of stock liquidation; (d) ₹4,45,191/- on account of rejected stocks; and (e) ₹11,19,331/- as interest on stock liquidation and rejected stocks from 01.10.2013 to 10.05.2016 computed at the rate of 18% per annum.

5.10 The arbitral proceedings culminated in the impugned award.

6. Ms Joseph, learned counsel appearing for the petitioner has assailed the impugned award, essentially, on two fronts. First, she

submitted that the Arbitral Tribunal had grossly erred in not considering the disputes raised by the petitioner in respect of the Agreement. She stated that it is the petitioner's case that he had duly discharged all his liabilities under the Agreement and, therefore, no amount was due to Reebok. Second, she submitted that the Settlement Agreement was sham Agreement and without any consideration. She earnestly contended that the Arbitral Tribunal did not examine the controversy as to whether any amount was due under the Agreement and merely proceeded to adjudicate the issue whether the amount specified in the Settlement Agreement was payable to Reebok. She submitted that since the entire dispute related to whether the Settlement Agreement was a sham Agreement, the Arbitral Tribunal ought to have examined whether any amount was due to Reebok under the Agreement. She referred to the order dated 14.09.2016 and contended that this Court had observed that the Settlement Agreement was without any consideration and was not enforceable. She submitted that this was ignored by the Arbitral Tribunal.

Reasons and Conclusion

7. As is apparent from the above, the principal question that fell for consideration of the Arbitral Tribunal was whether the Settlement Agreement was a sham Agreement as contended by the petitioner. It is relevant to note that the petitioner did not dispute the signatures on the Agreement. He claimed that the petitioner was not even given a copy of the Settlement Agreement for reading and the petitioner's signatures were taken on some blank papers. It was the petitioner's case that his

signatures were obtained by playing a fraud and the petitioner owed no amounts to Reebok. It was also contended on behalf of the petitioner before the Arbitral Tribunal that the Settlement Agreement was without any consideration and, therefore, not enforceable in law.

8. The Arbitral Tribunal observed that there was no dispute that the parties had entered into the Agreement and in terms thereof, Reebok had started supplying goods and had raised invoices for the said goods from time to time. It was also admitted by the petitioner in pleadings filed before the Arbitral Tribunal that the parties had continued their business relationship under the “New Business Module” for some time and thereafter, the petitioner had desired to terminate the business arrangement with Reebok. After examining the documents placed on record, the Arbitral Tribunal concluded that the signatures of the petitioner on the Settlement Agreement were genuine.

9. The Arbitral Tribunal examined the stand of the petitioner and found that the petitioner had taken inconsistent stands. On one hand, the petitioner had pleaded that his signatures were taken “*fraudulently and dishonestly on the blank papers without giving or assuring the details of the said agreement*”. It was also pleaded that the Settlement Agreement was without any consideration. In another paragraph (paragraph 20 of the impugned award), the petitioner had, *inter alia*, pleaded that the Settlement Agreement “*was not executed by the respondent*” [petitioner herein]. The Arbitral Tribunal also noted that in variance to the aforesaid stand, the petitioner sent an email dated 07.03.2013 to Rebook, *inter alia*, making several allegations. The relevant extract of the said email,

as quoted by the Arbitral Tribunal, is set out below:-

“(i) I submit that in the said meeting you confused me by showing certain statements.

(ii) Didn't give me an opportunity to show my records to substantiate my claim.

(iii) Your persons never gave me an opportunity of looking into the same.....

(iv) I submit that I have not executed the alleged MOU. I have not read the contents of the MOU.

(v) Persons who were present in the meeting threatened me to sign the MOU in the last moment by taking advantage, without looking into the contents of the MOU and without understanding it, I signed and put a seal on MOU”.

10. In his cross-examination, the petitioner had stated that he had signed on certain blank papers on 27.02.2013. He thereafter sought to explain the same by stating that by blank papers, he meant that some of the papers were blank. In view of the above, the Arbitral Tribunal observed that the petitioner had been changing the versions and thus, disbelieved the petitioner's case. Accordingly, the Arbitral Tribunal rejected the petitioner's claim that the Settlement Agreement was a sham Agreement and was invalid. The relevant extract of the decision of the Arbitral Tribunal is set out below:-

49. It is well settled, that “falsehood has no legs to stand”. The respondent herein, is blowing hot and cold at the same

time. He has been changing his version with regard to the Settlement Agreement dated 27.2.2013, at the drop of hat.

(i) His first plea that he was forced to sign on blank papers, stand demolished by his own cross-examination, in which he admits that some of the papers were blank.

(ii) Respondent's second plea, that he was not given an opportunity to read and understand the Settlement Agreement also falls to ground by his own e-mail dated 7.3.2013 stating, that "I submit that in the said meeting you confused me by showing certain statements:. This shows that respondent had seen certain documents.

(iii) Thirdly, in above e-mail respondent has stated, that without understanding he signed and put a seal on MOU. This goes on to show, that respondent had come prepared for the settlement and that is why, he had also brought the seal of his Company, otherwise there was no occasion for respondent to have brought the seal.

(iv) Fourthly, nowhere in the objections respondent took this plea, that in the meeting persons present threatened him to sign the documents, whereas while sending e-mail. dated 7.3.2013, the respondent had introduced a new version of "threatening him"

(v) Lastly, it would be important to note that respondent is not an illiterate person. In its cross examination, respondent has stated that;

“I have done diploma in pharmacy about 30 years back. I am in the business of sports apparels, sport shoes etc. since 2003. When I start any commercial activity with any of the company. I enter into an Agreement.”

50. Thus, respondent is an educated person and experienced businessman. It can't be expected from him, that he would sign certain papers without reading and understanding the content thereof. The cumulative effect of the above pleadings, documents and evidence produced on record, conclusively goes on to show, that after respondent decided to terminate the new business arrangement, the claimant readily agreed. It is well established practice in commercial trade, that when both parties are willing to close down the business, then it automatically follows that statement of accounts are to be drawn and dissolution deed or settlement deed (by whatever name it may be called) is to be prepared and accounts are to be settled.”

11. This Court finds no infirmity with the aforesaid findings.

12. The Arbitral Tribunal, having rejected the petitioner's claim that the Settlement Agreement was invalid, proceeded to make the impugned award on the basis of the terms of the Agreement.

13. The contention that the Settlement Agreement was without any consideration was also rejected, since it was admitted that there were commercial transactions between the parties and in the normal course, the parties would be required to settle their accounts on termination of the business agreement. The Arbitral Tribunal accepted that the Settlement Agreement was entered into to settle their claims in respect of

the business dealings under the Agreement and the “New Business Module”. This Court also finds no infirmity with the aforesaid view.

14. Insofar as the counter claims are concerned, the Arbitral Tribunal found that a certain claim based on debit notes were prior to the year 2012 and, thus, were hopelessly barred by time. The Arbitral Tribunal further found that the petitioner was unable to establish any of the claims made. The Court finds no reason to interfere with the decision of the Arbitral Tribunal to reject the counter claims. The learned counsel appearing for the petitioner has also not assailed the impugned award on this ground.

15. It is further necessary to bear in mind that the scope of judicial review in respect of an arbitral award is restricted and an arbitral award cannot be interfered with except on the grounds as set out in Section 34 of the Act. It is well settled that in these proceedings, the Court is not required to re-appreciate and re-appraise the evidence, and the decision of the Arbitral Tribunal is final and binding unless it is found that the same is liable to be set aside on the grounds as set out in Section 34 of the Act.

16. In the present case, the impugned award is neither patently illegal nor the view of the Arbitral Tribunal can be stated to be opposed to the public policy of India.

17. The next question to be addressed is whether the Arbitral Tribunal had erred in ignoring the observations made by this Court in an order dated 14.09.2016 in CS(COMM) 245/2016. Before proceeding further,

it would be relevant to refer to the relevant extract of the said order:-

“7. I have enquired from the counsel for the plaintiff that since there is admittedly an arbitration clause in the Franchise Agreement dated 17th August, 2006, admission of liability whereunder is made in the Settlement Agreement dated 27th February, 2013, why should the parties be not referred to arbitration.

8. The counsel for the plaintiff states that the plaintiff is basing its suit not on the Franchise Agreement dated 17th August, 2006 but purely on the Settlement Agreement dated 27th February, 2013 and thus the question of arbitration does not arise.

9. I have however enquired from the counsel for the plaintiff that if the plaintiff gives up the claim to be under the Franchise Agreement dated 17th August, 2006, why should the suit claim be not dismissed, as the admission of liability in Settlement Agreement dated 27th February, 2013 being without any consideration and therefore being not enforceable.”

18. It is, at once, apparent from the above that the observations were not conclusive findings and were only rendered in the context of Reebok’s objections for referring the disputes to arbitration. The observation which is relied upon by the petitioner is also couched as a query and not as a finding of the Court. Further, the Arbitral Tribunal had also noted that the observation made by the Court in the aforesaid order was only an observation made at the time of admission of hearing. The said conclusion cannot be faulted.

19. In view of the above, the petition is dismissed as unmerited. The pending applications are also disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

APRIL 11, 2018

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