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

\+ **ARB.P. 295/2012, I.As. 17031/2012, 9348/2014 & 1222/2017**

SWATANTER CHOPRA & ANR ..... Petitioners

Through: Mr. Rajshekhar Rao and Ms. Gauri Puri, Advocates (M:9899339554) with Petitioner in person.

versus

ANIL CHOPRA & ORS ..... Respondents

Through: Mr. Shailen Bhatia, Ms. Ekta Nayar Saini and Ms. Neelam Pathak, Advocates. (M:9818558690)

AND

\+ **O.M.P.(I) (COMM.) 244/2016, I.As. 9275/2011, 17020/2012, 9268/2014 & 1223/2017**

SWATANTER CHOPRA & ANR. ..... Petitioners

Through: Mr. Rajshekhar Rao and Ms. Gauri Puri, Advocates (M:9899339554) with Petitioner in person.

versus

ANIL CHOPRA & ORS ..... Respondents

Through: Mr. Shailen Bhatia, Ms. Ekta Nayar Saini and Ms. Neelam Pathak, Advocates. (M:9818558690)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER

% **27.08.2018**

1. The present petition arises out of Memorandum of Understanding (*hereinafter, 'MoU'*) dated 31st March, 2008 under which the parties have

divided the products and the companies in the following manner: -

> *"* ***<u>GROUP A :</u>***
> ***<u>M/S. ANANT TOOLS PVT. LTD. WITH ALL ASSETS & LIABILITIES:</u>***
>
> *Items to be Manufactured & Sold : -*
>
> *1. Anant Planes ....Total Home Sale & Indirect Exports.*
> *2. Masternet Planes*
> *3. T. Bar & Sash Bar*
> *4. Black For Randa Machine*
> *5. Clamp Heads*
> *6. Flooring Clamps*
> *7. Trowels (50% if selected)*
>
> ***<u>GROUP B :</u>***
> ***<u>1. M/S. Anant Tools (Unit No.II) Pvt. Ltd., With All Assets & Liabilities:</u>***
> ***<u>2. M/S. Kamal Tool Pvt. Ltd. With All Assets & Liabilities:</u>***
>
> *Items to be Manufactured & Sold : -*
>
> *1. Anant Planes (Total Direct Exports)*
> *2. Fischer Exports of Sheers Planes & Cast Iron Planes.*
> *3. Chisels, Gauges, Turning Tools, Carving Tools (All Direct/Indirect Exports)*
> *4. Claw Hammers & Craftsman Hammer*
> *5. Carpentry Vices*
> *6. C-Clamp Sheets*
> *7. Bench Hold Fast*
> *8. Corner Clamps*
> *9. Trowels (50% If Selected). (Anil Should Pursue to get the Samples Passed)"*

2. Group A is the Petitioners and Group B is the Respondents. The allegation of the Petitioners is that the Respondents are in violation of the terms of this MOU inasmuch as the Respondents have started manufacturing

products which were allotted to the Petitioners i.e. Group A at items 2 to 7 under a different mark called '*KAMAL*' which they could not have done. The purpose of dividing of the assets of the company and the products and the names was to ensure that they are not in direct competition except in respect of one product which was a common product.

3. Mr. Bhatia Ld. Counsel for the Respondents submits that the Petitioner is also in violation of the terms of the MOU as the Petitioners have also started exporting the product at item 1 which could not have been done by the Petitioners. Learned counsel further submits that this Court has no territorial jurisdiction as the agreement was executed in Jalandhar and the parties are based in Jalandhar. According to him even the properties are based in Jalandhar. The companies are registered in Jalandhar and there are several litigations pending between the parties in various forums in Chandigarh and in Jalandhar. Thus, these petitions should have been filed in Court of Jalandhar.

4. On the other hand, learned counsel for the Petitioners submits that this Court has jurisdiction to entertain these petitions as a part of the cause of action has arisen in Delhi. The Respondents' products which are violative of the terms of the MOU are being sold within Delhi. He further submits that there is correspondence addressed by the Respondents to customers located in Delhi. In view thereof, it is his submission that the cause of action has arisen in Delhi.

5. From the above submissions and stands of the parties, it is clear that there are disputes between the parties. The arbitration clause in the Agreement reads as under: -

> *"14. That in case of dispute or difference which may*

arise between the parties with regards to the cost, meaning and effect of this Memorandum of Understanding or any part thereof or the rights and liabilities of the parties or any other matters relating to affairs of above said companies, shall always be referred to arbitrators as stated above and their decisions shall always be final and binding on both the parties."

6. The documents that have been placed on record clearly show that the Respondents are offering and selling products in Delhi and there are letters placed on record which have been written by the Respondents to retailers in Chawri Bazar and in Hauz Khas, Delhi. In fact, the Local Commissioner who had been appointed by this Court on 15th November, 2010 had also seized several products from various dealers and distributors of the Respondents in Delhi. One such report of the Local Commissioner is relied upon which shows that the inventory seized by the Local Commissioner includes products under the brand name '*KAMAL*' which are item nos.2 to 7, allotted to the Petitioners as per the MOU. According to Mr. Bhatia the trademark *'KAMAL'* belongs to the Respondents and hence he is entitled to the same. The question as to whether in respect of item nos.2 to 7, the Respondents can sell under the trademark '*KAMAL'* is itself an arbitrable dispute which needs to be determined by the learned arbitrator.

7. Since, the alleged violation of the terms of the MOU has taken place in Delhi, this Court has the jurisdiction to entertain the present petition. The named arbitrators are Mr. Surender Mahajan, Mr. Ashwani Kumar, Mr. R.S. Bedi and Mr. J.P. Singh who had earlier passed the settlement as captured in the MoU.

8. Learned counsel for the Petitioners submits that three of the named arbitrators have declined to enter reference. Letters written by the said

named arbitrators are placed on record as Annexure-P-16 (colly). Insofar as Mr. J.P. Singh is concerned, learned counsel for the Petitioners, on instructions, expresses apprehensions inasmuch as Mr. J.P. Singh has purportedly filed affidavits in a litigation against the Petitioners.

9. In this view of the matter, this Court is of the opinion that an independent arbitrator ought to be appointed to resolve the disputes between the parties.

10. Accordingly, Justice Badar Durrez Ahmed, retired Judge of this Court is appointed as the sole arbitrator to adjudicate the disputes between the parties. The fee of the learned Sole Arbitrator shall be governed as per schedule IV of the Arbitration Act. The parties are permitted to approach the learned sole arbitrator with their respective claims and the counter claims. Parties are also permitted to approach the Ld. Sole Arbitrator for an interm directions, under Section 17 of the Arbitration Act.

10. There are several litigations pending between the parties. It is made clear that if the parties wish to expand scope of the arbitration beyond the disputes herein, they are permitted to do so. Parties to appear before the learned Sole Arbitrator on 22nd September, 2018.

11. Both the OMPs are disposed of. All pending I.A.s also stand disposed of.

PRATHIBA M. SINGH, J.

AUGUST 27, 2018

Rekha