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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO. 674 OF 2019

Poddar Diamond Ltd

...Petitioner

Versus

Urvashi Rautela and ors

...Respondents

Mr. Rohan Sawant a/w Mr. Amol Barare, Mr. Krishna B. Ms. Vrushali P
i/by Pragnya legal, for the Petitioner.

Mr. Rishikesh Soni and Ms. Raveena yadav i/by Ashok Purohit & Co.,
Respondent No.1.

CORAM : G.S. KULKARNI

DATE : 23rd September, 2019

PC.

- 1] Heard learned counsel for he parties.
- 2] This petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short called as, “the Act”); whereby the petitioner has prayed for interim measures pending arbitral proceedings.
- 3] On the earlier occasion on 3rd May, 2019, this Court, passed the following order:-

“1] Heard Mr. Sawant, learned counsel for the petitioner. Mr. Sawant states that respondents are served. He has tendered for the perusal of this Court acknowledgment of service of notice of these proceeding on the

respondents on 25.4.2019 and 304.2.109. Mr. Sawant also states that affidavit of service shall be placed on record within one week from today.

2] In order to give second chance to respondents to appear in these proceeding, this Court on 30th April, 2019 passed the following order :-

"1] Learned counsel for the petitioner states that the respondents are served by hand delivery. However, affidavit of service is not placed on record.

2] To enable learned advocate for the petitioner to issue fresh notice to respondents and place on record consolidated affidavit of service, stand over to 03.05.2019".

3] Despite service, none appears for the respondents.

4] This petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "ACA"), praying for interim measures pending arbitral proceedings. The case of the petitioner is that an agreement dated 30th June, 2018 came to be entered between the petitioner and respondent No.1. This agreement was to be effective from 31.08.2018 and is valid and subsisting upto 31.08.2019. By virtue of this agreement, respondent No.1 has specifically agreed in terms of clause No.7(k) of the agreement that respondent no.1 will not authorize or permit the direct usage of Attributes in connection with the advertising or publicity of any competitive products. It was agreed that, if any, permission, authority or right has been given, then the respondent shall take immediate steps to annul cancel such authority or right. Clause No.7(k) of the agreement reads thus:

"7(k). The Celebrity hereby undertakes that during the TERM, she shall not authorize or permit the direct usage of her ATTRIBUTES in connection with the advertising or publicity of any COMPETITIVE PRODUCTS if any permission, authority or right has been given, then the Celebrity shall take immediate steps to annul, cancel such authority or right."

5] The terms, "Agreement" and "Attributes" are also defined in clause 1.1. of the agreement which read thus :-

"Agreement", shall mean and include this celebrity endorsement

agreement, and include any schedule or annexure attached to it or incorporated in it by reference and shall include any modification of this Agreement as may be mutually agreed in writing by the parties.

"Attributes", shall include the Celebrity's name, nickname, autograph, initials, voice, likeness, image, illustrations, pre-approved biographical information, career achievements, silhouette, signature, photos, posters, caricatures, pictures, articles, and the like, either individually or as part of a group of other celebrities".

6. The case of the petitioner is that the petitioner is in receipt of knowledge and information as also material, of respondent No.1, in breach of the said agreement entered between the petitioner and respondent no.1, endorsing competitor's products subject matter of the agreement. The documents to that effect are annexed as Exhibit"B" to the petition. There is also such advertising material of respondent no.1 on social media. The case of the petitioner is that respondent No.1 is prohibited under terms of agreement to advertise in any manner the products of the competitors. The petitioner therefore prays for urgent ad-interim reliefs as prayed for.

6. Having heard the learned counsel for the petitioner and having perused the agreement in question and documents as placed on record, prima facie there appears to be much substance in the contention as urged by learned counsel for the petitioner. Respondent No.1 prima facie appears to have endorsed the products of the petitioner's competitors namely of respondent Nos.2 and 3 in breach of terms and conditions of agreement dated 30th August, 2018 entered with the petitioner. In the circumstances the petitioner is required to be protected by grant of ad-interim measures. Hence, the following order:-

Order

"i) Issue Notice to respondents, returnable on 18.06.2019.

ii) In the meantime, there shall be ad-interim reliefs in the following terms :-

(a) Respondent is restrained from directly or indirectly advertising any competitive products of respondent No.2 or any other competitor.

(b) there shall be further interim relief in terms of prayer clause (f) of the petition which reads thus :-

"(f) The respondent Nos. 2 and 3 be restrained from further exploiting any arrangement arrived at between itself and the respondent No.1 for promoting any jewelry products owned and manufactured by them".

Parties to act on authenticated copy of this order”.

4] Respondent No.1, who is party to the arbitration agreement is represented by Mr. Rishikesh Soni. Respondent Nos. 2 and 3, admittedly are third parties, who are stated to be using the advertising material. Respondent Nos. 2 and 3 are served, however, they have chosen not to appear in the present proceeding.

5] After this petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”), was heard for some time, learned counsel for the petitioner and learned counsel for respondent No.1, on instructions, from their respective clients, submit that their clients are agreeable that the disputes be referred to arbitral tribunal. The parties are also agreeable that ad-interim order dated 3rd May, 2019, shall continue to operate till disposal of Section 17 application.

6] The parties are agreeable that this petition filed under Section 9 of the Act, be permitted to convert into Section 17 application. The approach

of the parties is quite reasonable and the suggestions as made at Bar are required to be accepted. In the circumstances, further adjudication of this petition is not called for. It is accordingly disposed of by the following order.

Order

i] Mr. Karl Tamboly, advocate of this Court, is appointed as the prospective sole Arbitrator to adjudicate the disputes and differences between the parties, arising under the agreement dated 30th June, 2018;

ii] The prospective sole arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the provisions of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties;

iii] This petition is permitted to be converted into Section 17 Application to be adjudicated by the arbitral tribunal;

iv] Respondent No.1 is permitted to file reply to Section 17 Application, within two weeks of the same being present before the arbitral tribunal;

v] Till Section 17 is adjudicated and orders passed thereon by the arbitral tribunal, ad-interim order dated 3rd May, 2019, passed by this Court, shall continue to operate;

vi) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today at a date and time as may be fixed by the prospective arbitrator;

vii] The learned prospective arbitrator shall endeavour to publish an award as expeditiously as possible and within the time limit as prescribed under Section 29-A of the Act;

viii) The fees of the arbitral tribunal shall be governed in accordance with the fees prescribed under the Bombay High Court (Fees Payable to Arbitrators) Rules, 2018;

(ix) All contentions of the parties on merits of the matter are expressly kept open;

7] Office to forward a copy of this order to the learned Arbitrator on the following address:

Mr. Karl F. Tamboly
201/202, Savla Chambers,
20, Cawasji Patel Street, Fort
Mumbai 400 001.

contact No.9820582815.

(G.S.Kulkarni, J.)