

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION (L.) NO.1566 OF 2019

Mr. Sunil Kumar son of Bhawar Lal	
Proprietor of M/s. Bhawar Lifestyle	..Petitioner
Vs.	
Wella India Private Limited	..Respondent

**INTERIM APPLICATION NO.1220 OF 2020
IN
COMMERCIAL ARBITRATION PETITION NO.115 OF 2020**

M/s. Bhawar Lifestyle	..Applicant
In the matter between	
Wella India Private Limited	..Petitioner
Vs.	
Mr. Sunil Lunked, Sole Proprietor of Bhawar Lifestyle	..Respondent

Mr. Abhinandan Vagyani with Mr. Prashant More and Mr. Choudhari Moinuddin i/b. Mr. Pankaj Kandhari for Petitioner in ARBP No.1566/19 and for Applicant in IA.
Mr. Suvaankoor Das i/b. Krishnamurthy & Co. for Respondent.

**CORAM : G.S. KULKARNI, J.
DATE : MARCH 08, 2022**

P.C.:

1. This is a petition filed under Section 29A of the Arbitration and Conciliation Act, 1996 (for short, "the Act").
2. The prayers in the petition are two fold. Firstly, that the mandate of the arbitral tribunal be extended and secondly, the Court exercises its powers under sub-section (6) of Section 29A of the Act to appoint a substitute arbitrator, in the facts of the case, as set out in the petition.

3. It appears to be an agreed position between the parties that the last meeting which was held by the arbitral tribunal so appointed was in the year 2018. It appears that the respondent had moved this Court in Commercial Arbitration Petition (L.) No.1455 of 2019 praying for extension of the mandate of the arbitral tribunal which had come to an end on 25 August, 2019. This Court (G. S. Patel, J.) had passed the following order on 14 January, 2020 disposing of the said proceeding and thereby extending the mandate of the arbitral tribunal till 22 December, 2020:-

“1. The Petition is under Section 29-A of the Arbitration and Conciliation Act 1996. The parties entered into a Distribution Agreement on 14th October 2014. Disputes arose between the parties and the Petitioner invoked the Arbitration under Article 18 of the said Agreement by a letter dated 12th January 2018. Mr. Vishwanathan Iyer was appointed as the sole Arbitrator. The learned Arbitrator entered upon the reference to his arbitration on 26th February 2018.

2. Before the Arbitrator, the matter proceeded. After the expiry of the statutory period of arbitration, the parties consented on 26th February 2019 to a six-month extension of the arbitral mandate. The extended arbitral mandate ended on 25th August 2019.

3. At present, the Arbitration is at the stage of leading evidence and final arguments before the learned Sole Arbitrator. The parties thus seek an extension to complete the arbitral proceedings.

4. Having regard to these circumstances I will extend time till 22nd December 2020 to complete the arbitration.

5. The Petition is disposed of accordingly.”

4. It appears to be an admitted position that the status of the arbitral proceedings as noted in the order dated 14 January, 2020 passed by this Court (supra) has not changed. In these circumstances, the present petition has been filed by the petitioner now praying for extension of the

mandate as also for appointment of a substitute arbitrator.

5. In the facts and circumstances of the case, learned counsel for the respondent is also not in opposition for this Court to appoint a substitute arbitrator and extend the mandate of the arbitral tribunal.

6. As the parties have now agreed to terminate the mandate of the sole arbitrator earlier appointed, which shall be subject to the parties settling the fees of the said sole arbitrator, the Court would now be required to exercise its jurisdiction under sub-section (6) of Section 29A read with Sections 14 and 15 of the Act. The proceedings are accordingly disposed of by the following order:-

ORDER

- (i) By consent of the parties, the mandate of the learned sole arbitrator Mr. Vishwanathan Iyer stands terminated, subject to payment of the outstanding fees, if any, payable by the parties.
- (ii) Mr. Karl Shroff, Advocate of this Court is appointed as a substitute Arbitrator to adjudicate the disputes and differences between the parties as arisen under the Distribution Agreement dated 14 February, 2014.
- (iii) The learned substitute arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar, to be placed on record of this petition with a copy to be forwarded to both the parties.
- (iv) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;
- (v) The learned substitute arbitrator shall conclude the arbitral proceedings within a period of one year from the date of reference and shall carry forward the proceedings from the stage it had reached before

the erstwhile sole arbitrator.

(vi) The parties shall place on record of the substitute arbitrator all the proceedings of arbitration.

(vii) The parties are directed to co-operate in the early disposal of the arbitral proceedings and in the event of any delay being caused by the conduct of the party, the arbitral tribunal is free to pass appropriate orders.

(viii) All contentions of the parties on merits of the disputes are expressly kept open;

(ix) The fees payable to the arbitral tribunal shall be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018;

(x) The petition is disposed of in the above terms. No costs.

(xi) In view of the above order, interim application would not survive. It is accordingly disposed of.

(xii) Office to forward a copy of this order to the learned Arbitrator at the following address:-

“ Mr. Karl Shroff, Advocate

Address: 316, Commerce House, 3rd Floor, Opp. Kala Ghoda Cafe,
Fort, Mumbai.

Mobile No. 9820069915”.

[G.S. KULKARNI, J.]