

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ARB No. 339 of 2021(O&M).
Date of Decision:21.04.2022

Nourish Co. Beverages Limited

.....Applicant

Versus

Mauli International Beverages Private Limited

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Shrey Goel, Advocate
for the applicant.

Respondent proceeded *ex parte* on 06.12.2021.

LISA GILL, J(Oral).

Prayer in this application under Section 11 (5) of the Arbitration and Conciliation Act, 1996 (for short – ‘the Arbitration Act’), is for appointment of sole independent Arbitrator for resolution of disputes and differences arising between the parties out of Distributorship Agreement dated 28.01.2016, Annexure A-6 and Manufacturing and Supply Agreement dated 23.07.2018, Annexure A-7.

It is submitted that the applicant entered into a Distributorship Agreement dated 28.01.2016, Annexure A-6, with the respondent for their product ‘Tata Water Plus’ and any other variation of the said product that may be launched during the terms of the said Distributorship Agreement. The applicant, thereafter, entered into a Manufacturing and Supply Agreement dated 23.07.2018, Annexure A-7, for their products especially under the brand/mark ‘Tata Water Plus’. Both the agreements form part of one transaction. However, the applicant, it is submitted received various

complaints regarding mis-use of its name/bottles design pertaining to 'Tata Water Plus' by the respondent. Applicant issued a warning letter dated 06.07.2020, Annexure A-8, to the respondent, but illegal activities of the respondent it is stated, did not stop as was informed by various customers and general public that the respondent had been impersonating as a part of Tata Group and portraying that it had been authorized by the applicant to enter into business ventures with third party for the products of the applicant. It is stated that various persons duped by respondents approached the applicant for compensation of the loss caused to them. Applicant ultimately terminated the Distributorship Agreement on 11.12.2020, Annexure A-11 as well as the Manufacturing and Supply Agreement on 22.12.2020, Annexure A-12. A sum of Rs. 06,19,313/-, is stated to be due towards the applicant, but the same has not been returned. Accordingly, legal notice dated 15.03.2021, Annexure A-15, was issued to the respondent in terms of Clause 24 of the Distributorship Agreement dated 28.01.2016 and Clause 18 of Manufacturing and Supply Agreement dated 23.07.2018. Respondent however failed to nominate or appoint an Arbitrator. Accordingly, present application was filed.

It is submitted that applicant preferred a petition under Section 9 of the Arbitration Act, which is pending before the learned Additional District Judge, Gurugram. The respondent through its directors, principal officer, servants and agents, has been "restrained from manufacturing, selling, offering for sale supplying, advertising, even on website directly or indirectly dealing in any business unauthorizedly using the petitioner's made marks 'TATA' and 'Tata Water Plus', 'Tata Gluco', 'Tata Gluco Plus' and Himalayan and permutations/combinations thereof till further orders". Copy of this order dated 24.09.2021 is attached as Annexure A-1, with CM-

12689-CII of 2021.

Notice was issued to the respondent, but despite service, respondent chose not to appear. Perusal of the file reveals that the matter was adjourned on various occasions to await the presence of the respondent and ultimately the respondent was proceeded *ex parte* on 06.12.2021.

Admittedly, the dispute resolution clause between the parties as per Distributorship Agreement dated 28.01.2016, reads as under:-

24. ARBITRATION.

24.1. Any dispute or difference between the parties as to the effect, interpretation or application of this Agreement or as to their rights, duties or liabilities there under, or as to any act, matter or thing arising out of, consequent to or in connection with this Agreement (hereinafter referred to as 'the Difference') shall be resolved amicably through negotiations. Such negotiations shall commence within a period of 7 (seven) days of the issue of notice by either Party calling for the same (hereinafter referred to as 'the Notice').

24.2. In the event that such negotiations fail to resolve the Difference within a period of days from the date of receipt of Notice by the other Party, either Party may invoke this arbitration clause under notice to the other. The Difference shall then be referred to and finally resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996, by an arbitrator (s) appointed in accordance with the said Act.

24.3. The place of arbitration shall be Gurgaon and the language of arbitration shall be English. The costs of arbitration shall be borne by the respective Parties. The award(s) in such arbitration shall be final and binding upon the Parties."

Admittedly, the dispute resolution clause between the parties as per Manufacturing and Supply Agreement dated 23.07.2018, read as under:-

18. ARBITRATION.

18.1. Any dispute or difference between the parties as to the effect, interpretation or application of this Agreement or as to their rights, duties or liabilities there under, or as to any act, matter or thing arising out of, consequent to or in connection with this Agreement (hereinafter referred to as 'the Difference') shall be resolved amicably through negotiations. Such negotiations shall commence within a period of 7 (seven) days of the issue of notice by either Party calling for the same (hereinafter referred to as 'the Notice').

18.2. In the event that such negotiations fail to resolve the Difference within a period of days from the date of receipt of Notice by the other Party, either Party may invoke this arbitration clause under notice to the other. The Difference shall then be referred to and finally resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996, by an arbitrator (s) appointed in accordance with the said Act.

18.3. The place of arbitration shall be Gurgram and the language of arbitration shall be English. The costs of arbitration shall be borne by the respective Parties. The award(s) in such arbitration shall be final and binding upon the Parties.”

The existence of an arbitral dispute as well as arbitral clause is evident on record. Respondent choose not to appear and controvert the averments raised by the applicant.

I do not find any impediment to the appointment of an independent Sole Arbitrator for resolution of the entire dispute between the parties arising out of Distributorship Agreement dated 28.01.2016 and Manufacturing and Supply Agreement dated 23.07.2018.

Keeping in view the facts and circumstances as above, this petition is allowed and Sh. C.B.Jaglian, District & Sessions Judge (Retd.),

resident of Flat No. D-503, Alaknanda CGHS, Plot No. GH-45, Sector 56, Gurgaon-122011, Haryana, mobile no. 9999056150, is appointed as the Sole Arbitrator to resolve the dispute/differences between the parties. Appointment is subject to declaration to be made by the Arbitrator under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties. The Arbitrator is to complete the proceedings within the time limit specified under Section 29-A of the Act. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended, to be borne equally by the parties.

A copy of this order be dispatched to Sh. C.B.Jaglian, District & Sessions Judge (Retd.), at the following address:-

Flat No. D-503, Alaknanda CGHS, Plot No. GH-45, Sector 56, Gurgaon-122011, Haryana, mobile no. 9999056150.

21.04.2022
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.