

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO. 318 OF 2022**

Ms. Kalpana Ghatage Sole Proprietor Of Shree Amba Fashions ...Petitioner

Versus

M/s. Toonz Retail India Private Limited & Anr. ...Respondents

**WITH
REVIEW PETITION IN COMM. DIVISION MATTERS (L) NO.31424 OF 2022
IN
COMMERCIAL ARBITRATION PETITION NO. 318 OF 2022
WITH
INTERIM APPLICATION (L) NO. 31428 OF 2022
WITH
REVIEW PETITION IN COMM. DIVISION MATTERS (L) NO.31426 OF 2022
IN
COMMERCIAL ARBITRATION PETITION NO. 314 OF 2022
WITH
INTERIM APPLICATION (L) NO. 31433 OF 2022
WITH
ARBITRATION PETITION NO. 343 OF 2024
WITH
ARBITRATION PETITION NO.390 OF 2024
WITH
ARBITRATION PETITION NO.550 OF 2024
WITH
ARBITRATION PETITION NO.117 OF 2024
WITH
ARBITRATION PETITION NO.165 OF 2024**

**Mr. Karl Tamboly, a/w Abhay Dhadiwal, Pooja Yadav, Rohit Jain,
i/b Jayakar & Partners, for the Petitioner in CARBP/318/2022.**

Mr. Ashwin Shete, a/w Abhay Dhadiwal, Pooja Yadav, Rohit Jain,

i/b Jayakar & Partners, for Petitioner in CARBP/314/22 & ARBP/343/22.

Mr. Sandeep Raman, a/w Poushali Roychoudhury, Tanay Mandot, Rangan Majumdar, for Respondent No.1.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : SEPTEMBER 24, 2025

ORDER :

1. Arbitration Petition No.390 of 2024, Arbitration Petition No.550 of 2024, Arbitration Petition No.117 of 2024 and Arbitration Petition No.165 of 2024 are not on board today. By consent of the parties taken on board and heard along with the proceedings listed today.

2. Learned Advocates for the parties also agree that Arbitration Petition No. 318 of 2022 may be treated as the lead Petition and dealing with it would be dispositive of all the Petitions. This is a Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) dealing with disputes and differences between the parties in connection with a Franchise Agreement dated January 26, 2019 (“***Agreement***”) between the Petitioner and the Respondent for conduct of business in Kolhapur by the franchise arrangement. The arbitration agreement clause is contained at Page 41 of the Petition. In the interest of brevity,

the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

3. It is common ground that a sum of Rs.21 lakhs has been paid as a security deposit and that the aforesaid agreement has an arbitration clause. The parties have been before this Court on multiple occasions and the matter has remained unresolved. It is seen from the reply filed to the Petition that Respondent No.1 is said to have transferred the business as a going concern under the Business Transfer Agreement dated June 5, 2020 to Respondent No.2 resulting in all the liabilities including the liability relating to the security deposit having been transferred to Respondent No.2. A Schedule to the Business Transfer Agreement identifies various security deposits that had been placed with Respondent No.1 and that includes the security deposit of Rs. 21 lakhs paid by the Petitioner to Respondent No.2.

4. It is also seen from the record that Respondent No.2 has also acknowledged his liability to pay a net sum of Rs.20.43 lakhs after deducting from the security deposit for stock shortage to the Petitioner. Therefore, Learned Counsel for the Petitioner seeks relief in terms of prayer clause (a) which is for deposit of the security deposit with this

Court, which should abide by the outcome in the arbitration proceedings.

5. However, it is also quite clear that the Petitioner has not even invoked arbitration till date. Learned Advocate for the Respondent No. 1 would submit that there is no tearing urgency to grant a direction to deposit, considering that the Petitioner has not moved a muscle towards initiating and pursuing arbitration proceedings, even after the letter of Respondent No.2 that the security deposit was confirmed as being payable by Respondent No.2. Therefore, he would submit that the Petition may be converted into an Application under Section 17 without insisting on an application under Section 17 of the Act, since he consents to appointment of an arbitrator who could then deal with the appropriate interlocutory measure.

6. It is now trite law that a manifest intent to arbitrate is a necessary requirement for grant of interlocutory relief under Section 9 of the Act. Considering the sheer efflux of time and the fact that till date arbitration has not even been invoked for even a Section 11 Application to be filed, taking on board the fair concession that an arbitral tribunal may be appointed forthwith made by Advocates for the Respondent No. 1, an arbitral tribunal is hereby appointed in the following terms to deal

with the disputes and differences between the parties and to arrive at appropriate interlocutory measures, taking into account the merits of what would be protective and preservative of the arbitration agreement:-

A) Mr. Vaibhav Charalwar, a learned advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

Office Address:- Chambers of Dr. Birendra Saraf,
302, Oval House,
Nagindas Master Road, Kala
Ghoda, Mumbai 400001.

Email ID: vaibhavcharalwar@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date of upload of this order. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of

this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

D) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance,

and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

7. The parties shall approach the Learned Arbitral Tribunal within a period of one week from the date of upload of this order. The arbitral tribunal is requested to convene within a week of being approached to issue appropriate directions to the parties.

8. With the aforesaid directions, all the captioned Section 9 Petitions are ***finally disposed of*** converting them into applications under Section 17 of the Act. All the Interim Applications and attendant proceedings also stand ***disposed of***.

9. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

10. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]