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

ARBITRATION PETITION NO.328 OF 2024

Heather Cosmetic Tex Limited ....Petitioner
V/S
Kurseong Computers Sales Pvt. Ltd. ....Respondent

WITH
INTERIM APPLICATION NO.2830 OF 2024
IN
ARBITRATION PETITION NO.328 OF 2024

Heather Cosmetic Tex Limited ....Applicant
IN THE MATTER BETWEEN
Heather Cosmetic Tex Limited ....Petitioner
V/S
Kurseong Computers Sales Pvt. Ltd. ....Respondent

Mr. Bhavin Gada *for the Petitioner/Applicant.*

Mr. Meezan Patel with Ms. Harshada Kamble i/b Mr. Amol Doijode *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.
DATE : 7 NOVEMBER 2025.

ORDER:

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) challenging Award dated 9 May 2024 passed by the learned sole Arbitrator. By the impugned Award, the learned Arbitrator has directed the Petitioner to pay to Respondent amount of Rs.25,00,000/- alongwith interest at the rate of

12% per annum from the date of payment till the date of refund. Respondent is granted liberty to collect the goods from Claimant's warehouse at his own expenses.

2. Petitioner is engaged in the business of manufacture, import-export distribution and retailing of women's undergarments and lingerie under the brand names "Secret Curves/Secrett Curves". Respondent is also engaged in the business of retailing, distribution and marketing of undergarments *inter alia* through its retail stores. 'Market Fulfillment Agreement' dated 23 June 2021 **(MFA)** was executed between Petitioner and the Respondent. According to the Respondent, the MFA was for effecting sale of products of the Petitioner only on online platforms whereas it is the contention of the Petitioner that the Agreement also envisaged purchase of products by the Respondent for the purpose of sale in retail outlets and offline stores. Under the Agreement, Respondent was to place an order of purchase of stock worth Rs.50,00,000/- by making advance payment of Rs.25,00,000/- plus GST. The balance amount was payable within three equal installments. Respondent had paid an amount of Rs.5,00,000/- to the Petitioner on 19 June 2021 which was adjusted against MFA. On 28 June 2021 and 29 June 2021, Respondent made payment of two tranches of Rs.10,00,000/- each to the Petitioner. Respondent paid total amount of Rs.25,00,000/- to the Petitioner. Petitioner despatched products to the Respondent allegedly worth Rs.39,15,233/- and raised Bill No.1. The products in respect of Bill No.1 were delivered to the Respondent on 19 July 2021. Petitioner claims to have despatched further products worth Rs.5,15,067/- and Rs.8,18,087/- by raising Bill Nos.2 and 3. Petitioner further claims to have despatched products worth Rs.4,43,139/- on 26 July 2021 by raising Bill No.4.

Plaintiff claims to have delivered products covered by Bill Nos.2 and 3 on 26 July 2021 to the Respondent. Similarly products covered by Bill No.4 were delivered on 30 July 2021. On 3 August 2021, Petitioner requested for payment of GST amount of Rs.4,81,278/-. Thereafter Petitioner started demanding balance amount due from the Respondent. Respondent refused to pay the amount of GST till commencement of the business. Thereafter, it appears that certain correspondence took place between the parties regarding opening of accounts on the online platforms in the name of the Respondent for online sale of the products. Respondent called upon the Petitioner to take back the products on 6 September 2021 and requested for return of advance amount of Rs.25,00,000/-. On the other hand, Petitioner insisted upon making the balance payment of Rs.31,91,526/-. On 8 April 2022, Respondent invoked the arbitration clause in the MFA. Petitioner filed recovery Suit against the Respondent in City Civil Court at Bombay. On 22 July 2022, mediation was initiated in respect of the said Suit. In the meantime Respondent preferred Arbitration Application No.5989 of 2023 before this Court under Section 11 of the Arbitration Act, in which the learned sole Arbitrator was appointed on 9 March 2023 to adjudicate the disputes. Respondent filed Statement-of-Claim on 12 April 2023, which was resisted by the Petitioner by filing Statement-of-Defence. Petitioner also filed Counter-Claim for recovery of balance amount which was opposed by Respondent by filing Written Statement. Parties agreed before the Arbitrator not to lead evidence. After considering the documentary evidence and after hearing the counsel appearing for the parties, the Arbitrator has delivered Award dated 9 May 2024 partly allowing the claim of the Respondent to the extent of refund of amount of Rs.25,00,000/- with 12% interest per annum. However, the claim of the Respondent for warehousing charges, insurance, etc. of Rs.6,30,000/- is rejected. The Counter Claim filed by the Petitioner for amount of Rs.44,14,546/- has been rejected. Instead Petitioner is granted liberty to collect the products from warehouse of the Respondent after refund of amount of Rs.25,00,000/- alongwith interest. Aggrieved by the Award dated 9 May 2024, Petitioner has filed the present Petition under Section 34 of the Arbitration Act.

3. Mr. Gada, the learned counsel appearing for Petitioner has submitted that the learned Arbitrator has erred in treating the MFA to mean an agreement only for sale of the products on online platforms ignoring the position that the MFA also envisaged sale of the products in retail outlets as well as offline platforms. He would invite my attention to definition of the term "Marketplace" which includes retail outlets and offline stores as well. That thus, the Agreement between parties was not restricted only to online sales. That by construing the MFA to be only for online sales, the learned Arbitrator has virtually re-written the contract between the parties, which is a fit ground for setting aside the Award. In support he would rely upon judgment of the Apex Court in ***Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India***[1]. He would further submit that the MFA ought to have been read in its entirety for the purpose of holding that the same contemplated offline sale of the products supplied by the Petitioner. That this is a transaction of purchase of products by the Respondent upon making payment thereof. That since products are delivered, Respondent is bound to pay for the purchase thereof. That MFA did not provide for any restriction on the Respondent to sell the goods only on online platforms. That the findings recorded by the learned Arbitrator clearly

1 (2019) 15 SCC 131

amount to deviation from the agreed terms of the contract and that therefore, the Award deserves to be set aside. In support he would rely upon judgment of the Apex Court in ***Sepco Electric Power Construction Corporation vs. GMR Kamalanga Energy Ltd***[2]**.** He would submit that findings recorded by the learned Arbitrator are such that no fair minded or reasonable person would hold, upon reading of the entire Agreement, that the same contemplated only online sale of goods. He would rely upon judgment of the Apex court in ***Associate Builders vs. Delhi Development Authority*** [3]. That Respondent operates offline stores and could have sold the products received by it.

4. Mr. Gada would further submit that the e-mails exchanged between the parties cannot and would not override the terms of the Agreement. That the responses given by the Petitioner to the Respondent through e-mail correspondence cannot be construed to mean that the Petitioner was under any obligation to aid or assist the Respondent to commence the business of e-commerce platform as Respondent was free to cause sale of the goods even in retail outlets and off-line platforms. That having accepted the goods by making advance payment, Respondent could not have avoided making balance payment therefor by demanding taking back the products by Petitioner. That the findings recorded by the learned Arbitrator are contrary to the public policy of India and against most basic notions of justice. He would therefore pray for setting aside the impugned Award.

5. The Petition is opposed by Mr. Patel, the learned counsel appearing for the Respondent. He would submit that the learned

2 2025 SCC OnLine SC 2088

3 (2015) 3 SCC 49

Arbitrator has rightly construed the Agreement executed between the parties as the one for sale of goods on the online platforms. That holistic reading of all clauses of the Agreement would leave no manner of doubt that the Respondent was supposed to cause sale of Petitioner's goods on the online platforms alone. That the Agreement was executed with a view to enable Respondent to operate accounts of the Petitioner on the online platforms alone. That the learned Arbitrator has construed the nature of the contract by taking into consideration its covenants as well as correspondence between the parties. That the findings recorded by the learned Arbitrator are thus plausible, warranting no interference in exercise of jurisdiction under Section 34 of the Arbitration Act.

6. Mr. Patel would submit that Respondent is described as a 'seller' in the Agreement and not a 'buyer' of goods. The very objective behind completing exercise of KYC was for the purpose of selling the goods of Petitioner through its accounts with the online platforms. The sale transaction was not to commence before setting up of vendor accounts. If the Agreement was for sale of goods in retail outlets, it was not necessary for Petitioner to impose any conditions on the Respondent. That the learned Arbitrator has rightly appreciated the position that the Petitioner did not co-operate for completion of transfer of online accounts in the name of the Respondent for the purpose of online sale of the products. That it was impossible for the Respondent to sell the products of the Petitioner online in absence of opening of vendor accounts. He would thus submit that no interference is warranted in well reasoned Award passed by the learned Arbitrator. He would pray for dismissal of the Arbitration Petition.

7. Rival contentions of the parties now fall for my consideration.

8. Perusal of the Award passed by the learned Arbitrator would indicate that the main controversy between the parties is about the exact nature of arrangement agreed between them. While it is the case of the Respondent/Claimant that the MFA was executed only for the purpose of enabling the Respondent to sell the products of Petitioner on online platforms, it is the case of the Petitioner that the Agreement also envisaged sale of products in retail outlets and offline platforms. Thus determination of issue of exact nature of Agreement would provide a key to the resolution of entire dispute between the parties.

9. Both the Petitioner and the Respondent are engaged in the business of marketing, distributing and selling lingerie and women undergarments. Petitioner is also engaged in the activities of manufacturing and importing of the lingerie and women undergarments. The recitals to the Agreement indicate that Respondent had signified its desire to sell the products of the Petitioner on market places/platforms. Recital (iii) describes the exact purpose for which the Agreement is executed. Recital (iii) reads thus:

> "(iii) In pursuance to the above, Heather and Seller have agreed to enter into this Agreement by which Heather will sell products in order to provide the Seller to sell at Market Places/Platforms as a legal vendor for selling and marketing its Products, on the terms and conditions hereinafter appearing, after getting due registration of Seller KYC at Market Places/Platforms."

10. Thus the Agreement was intended to be executed between the parties for selling of the products of the Petitioner at marketplaces/platforms as a legal vendor after getting due registration of

seller KYC at marketplaces/platforms. The exact commercial understanding between the parties is captured in paragraph 7 of the Agreement which reads thus:

> **"7. <u>Pricing and Payment Structure</u>**
>
> 7.1 For all Orders placed on the market places/platforms, payments shall be collected by Seller.
>
> 7.2 33% on MRP will be billed by Heather and plus Goods & Services Tax.
>
> 7.3 Seller will place an order for the purchase of stock worth Rs.50 lakhs. Seller will make upfront payment of Rs.25 lakhs and GST amount as per Sale Bill. Heather will dispatch the stock in one or multiple sale bills as warehouse packing and dispatch logistics permit, in the least possible time frame.
>
> 7.4 Seller will pay the balance amount in 3 equal installments.
>
> 7.5 In case the seller has to sell the goods below the MRP on any designated market places or on all e-commerce websites as mutually agreed, Heather will compensate the Seller by way of credit note after making necessary adjustments between the MRP based billing and Sale Price within 30 days from the date of change in Selling Price.
>
> 7.6 All future and subsequent orders from Seller to be paid within 7 days from the date of receiving goods by Seller."

11. Under clause 4.1 the Respondent/Seller was allowed to display and list its products on the website or on the vendor account. Perusal of various covenants of the Agreement do create an impression that the same was for the purpose of operating the accounts of the Petitioner on various online platforms for sale of the products.

12. The sheet-anchor of the Petitioner in support of his contention that the Agreement envisaged offline sale of goods is definition of the term "market place" which reads thus:

> *"Marketplace"* shall mean e-commerce Platform on a digital & electronic network, retail outlets and offline stores, etc. to act as a facilitator between Customer and Seller;

13. It is on the basis of definition of the term "marketplace" that the Petitioner claims that the Agreement envisaged sale of the products in retail outlets and offline platforms as well.

14. However, perusal of various covenants of Agreement does not indicate that the relationship between Respondent and Petitioner was that of buyer and seller. Respondent is not the buyer of products of Petitioner, who is not the seller. On the contrary, Respondent is described in the MFA as the 'seller'. The covenants of Agreement as well as e-mails exchanged between the parties do not indicate that Respondent was supposed to purchase goods from Plaintiff for the purpose of causing further sale to its customers. Had this been a transaction of Respondent purchasing Plaintiff's products for further sale, there would not have been any provisions in the contract for completion of KYC formalities, opening of vendor accounts, catalogue of the products etc. If Petitioner was merely a seller of products to the Respondent, he would not have regulated the manner of sale of the products by the Respondent. The very fact that several activities relating to online sale of products is governed by various covenants of the Agreement would leave no manner of doubt that the MFA was essentially for sale of products of the Petitioner on online platforms.

15. The learned Arbitrator has taken into consideration various clauses of the Agreement as well as correspondence exchanged between the parties and has thereafter arrived at a conclusion that the Agreement is essentially for sale of products of the Petitioner on online platforms. Thus the learned Arbitrator has undertaken the exercise of interpretation and construction of the contract by taking into account its covenants as

well as correspondence and conduct of the parties. The interpretation made by the learned Arbitrator is plausible one. It cannot be said that the interpretation is so absurd that the same could not have been done by the a fair-minded or a reasonable person. It is not that the learned Arbitrator has re-written any term of the contract which the parties never intended to incorporate. Therefore, no case is made out for interference in the finding recorded by the learned Arbitrator that the contract is essentially for sale of products of the Petitioner on online platforms. Since the case does not involve rewriting of terms of contract, reliance by the Petitioner on judgments of the Apex Court in ***Associate Builders*** (supra) and ***Ssangyong Engineering and Construction Company Ltd*** (supra) is inapposite.

16. The contention of the Petitioner that the learned Arbitrator has deviated from the terms of the contract is also clearly misconceived. Construction or interpretation of contract by the learned Arbitrator is a concept distinct from the concept of causing deviation from terms thereof. It is not that the learned Arbitrator has issued any direction which is contrary to any specific covenant in the contract. He was required to interpret and construct the contract on account of baseless defence raised by the Petitioner that the Respondent could have caused sale of the products through retail outlets and offline platforms. Therefore, the case does not involve deviation from the agreed terms of the contract and reliance by Petitioner on judgment of the Apex Court in ***Sepco Electric Power Construction Corporation*** (supra) is clearly misplaced.

17. After taking into consideration the documentary evidence on record, the learned Arbitrator has arrived at the finding that the Petitioner

has committed breach of the Agreement by not taking steps to register the Respondent on any of the e-commerce platforms which could have facilitated the sale of products on such platforms. The learned Arbitrator has accordingly held that termination of the Agreement by Respondent was justified. In my view, once the Agreement is construed to mean sale of products of Petitioner on online platforms, such sale could commence only after setting up of vendor accounts on online platforms. However, as held by the learned Arbitrator, the Petitioner did not take any steps for registration of the Respondent on any of the e-commerce platforms. Respondent was to act as a legal vendor of the Petitioner for selling and marketing the products of the Petitioner at market places and platforms. If the Petitioner did not permit Respondent to become its legal vendor for causing of sale of products on online platform by registering it on such platforms, it was impossible for Respondent to act in accordance with the Agreement. Breach of obligations under the Agreement on the part of Petitioner is thus writ large. The finding of breach of obligations under the Agreement on the part of the Petitioner as recorded by the learned Arbitrator does not warrant any interference in exercise of jurisdiction under Section 34 of the Arbitration Act.

18. Perusal of correspondence between the parties both before and after execution of Market Fulfilment Agreement would also leave no manner of doubt that the Agreement was only for sale of Petitioner's products on e-commerce platforms. The initial e-mail dated 11 June 2021 of the Petitioner indicates handing over of control panels of Nykaa, Myntra, Amazon, Limeroad, Ajio, Flipkart and Snapdeal to the Respondent. The marketplaces described in the said e-mail dated 11 June 2021 included only the online platforms of Myntra, Nykaa, Limeroad,

Ajio, Flipkart, Snapdeal and Amazon. The expression used in the business proposal of "handover the control panel" would clearly indicate that the transaction contemplated between the parties was essentially for transfer of online business of Petitioner to Respondent. This intention is also apparent from e-mail dated 27 August 2021 by Respondent to Petitioner wherein Petitioner was accused of simply dumping the stock without having any intention to 'transfer the online business'. Thus the intended transaction was for taking over online sale business of Petitioner by Respondent.

19. Before entering into MFA, Respondent had sought sales figures of the Petitioner on e-market place vide e-mail dated 12 June 2021 and the sales figures were shared by the Petitioner to the Respondent on 17 June 2021. If Respondent was supposed to buy Petitioner's products for offline sale in its retail outlets, there was no reason for the Respondent to demand and for the Petitioner to supply sales figures of e-marketplace. Thus various covenants of the MFA coupled with e-mail correspondence between the parties leave no manner of doubt that the Agreement was only for causing sale of products of Petitioner on various online platforms. The learned Arbitrator has rightly construed the contract. The interpretation of the contract made by the learned Arbitrator is well supported by documentary evidence on record. In exercise of power under Section 34 of the Arbitration Act, this Court cannot interfere with the interpretation of contract by the Arbitrator as error, if any, in interpreting the contract would be an error within his jurisdiction.

20. The Petitioner has thus failed to make out any valid ground of challenge to the impugned Award. The Petition must fail. The Petition is accordingly dismissed without any further order as to costs.

21. In view of the disposal of the Arbitration Petition, Interim Application would not survive and the same is also disposed of accordingly.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM
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