* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: July 01, 2009
Date of Order: July 03, 2009

+Arb. Appeal 3/2009
% 03.07.2009

M/s Siddhartha Sales Agency ...Appellant
Through : Mr. Jayant Bhushan, Sr. Adv. with Mr. Pancham Suvana & Mr. Biju Mattam, Advocates

Versus

M/s Sony India Pvt. Ltd. ...Respondent
Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Vijay Nair, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. This appeal under Section 37(2) of Arbitration & Conciliation Act, 1996 (for short, "the Act") has been preferred against an order dated 4th February 2009 passed by the learned Sole Arbitrator.

2. The learned Arbitrator was referred a dispute in respect of determination of distributorship agreement between the appellant and respondent. The total claim of appellant made before the Arbitrator is for an amount of Rs.8,33,32,220/-. During pendency of the claim, appellant made an application under Section 17 of the Act stating therein that the respondent had dumped stock worth Rs.62,12,940/- with the appellant and billed the same to appellant without the purchase orders and this stock was lying with the appellant and that the respondent should be directed to take back the

stock so that the bank may be paid the outstanding amount. The other prayer made in the application was that a duly approved claim of Rs.20,25,000/-, not paid by the respondent to the appellant be ordered to be paid to the appellant and the advertising material etc which cannot be used by appellant should be ordered to be taken back by respondent so that the expensive rental space was freed.

3. The learned Arbitrator dismissed the application observing that prima facie the plea of dumping does not seem to be convincing and even if the plea of involunteer dumping was accepted, the same would be outside the purview of distributorship agreement and thus perhaps outside the purview of Arbitration. It was also observed that Section 17 envisages only an order directing a party to take interim measures of protection in respect to the subject matter of dispute, directing respondent to pay the amount as claimed by the appellant would in fact amount to passing of an interim award and would not be an order for interim measure of protection, more so when the respondent has denied its liability and has claimed that the amount already stood settled.

4. The Arbitration Clause between the parties reads as under:-

> *"22.3.Notwithstanding anything contained in this Agreement, the termination of the Agreement by Sony India would be final and not subject to any restrain order during the arbitration proceedings. The arbitration would be confined to monetary compensation only. Upon termination Distributor shall not be entitled to use the Trademark and goodwill of Sony India."*

Considering the arbitration clause, learned Arbitrator observed that he was obliged to decide the monetary compensation only and it was not in his jurisdiction to pass a direction to the respondent to take back the stock.

5. It is submitted by counsel for appellant that the appellant had entered into a distributorship agreement with the respondent and disputes arose between the parties about the termination of this distributorship agreement. Respondent's contention is that the distributorship agreement was converted into a franchisee agreement although there is no written franchisee agreement between the parties. However, whether there was a distributorship agreement or a franchisee agreement, the liability of respondent under both the agreements in respect of the stock at the time of termination was as under:-

> ***18.6. Upon termination of this agreement, distributor shall:***
>
> *18.6..1* *Cease to use the Intellectual Property Rights in any way whatsoever on the stationary, letter-heads, packaging vehicles, documents, advertising material and shall forthwith return the Intellectual Property Rights of Sony India together with all documents, records, data, information, stationary, promotional material and documents of any nature whatsoever in its possession or control relating to the products or to Sony India.*
>
> *18.6.2* *Sell back to Sony India the products remaining unsold at the time of termination. It is however understood that the sales return at price, prevailing at the time of termination is contingent on the fact that the sales return products at the relevant time, are in factory*

packed condition and are current models at the time of termination.

18.6.2.1 Products in open/ display/ demo condition shall not be eligible for returns."

6. It is submitted by appellant that the respondent was obliged to take back the stock in view of the above referred clause of the distributorship agreement as a stock worth more than Rs.62 lac was lying dumped at the place of appellant which cannot be sold by the appellant since the distributorship agreement as well as the franchisee agreement both stood terminated.

7. It is further argued that the learned arbitrator wrongly observed that it could only decide the monetary compensation. The arbitration agreement could not have effect of overriding the powers granted under Arbitration & Conciliation Act, 1996 to the Arbitrator of deciding the interim applications and if the arbitration clause contains any such provision, the same was contrary to public policy. The learned arbitrator in his order dated 4th February 2009 also wrongly observed that the appellant was not prepared to get the stock inspected to know as to whether the stock was still in factory packaged condition and was of the tune alleged termination of distributorship agreement. It is submitted that Mr. Pandey, counsel for appellant, had filed an affidavit to the effect that he had not made any such submissions before the learned Arbitrator.

8. It is an undisputed fact that the appellant's claims made before the Arbitrator includes the amount of Rs.62, 12, 940/- and it is the first item of the total claim of more than Rs.8 crore. The learned Arbitrator while

considering the claim has to decide the issue whether the appellant was entitled to this amount or not. The learned Arbitrator observed that it was a matter of evidence to see whether these goods/stocks allegedly billed to the appellant were part of the distributorship agreement or not. Reference made to the arbitrator was in respect of disputes concerning the distributorship agreement only. There is no dispute that two relationships are being pleaded; first, a distributorship agreement and thereafter a franchisee agreement, when the appellant had taken over another of its sister concern already having franchisee agreement with the respondent. Thus, unless and until the arbitrator comes to a finding that the goods allegedly dumped were part of the distributorship agreement, the Arbitrator could not have given a finding about the return of these stocks. The arbitrator rightly observed that this required evidence.

9. Section 17 of the Arbitration & Conciliation Act, 1996 reads as under:-

> ***"Interim measures ordered by arbitral tribunal. –***
> *(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.*
>
> *(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1)."*

10. A perusal of above section makes it abundantly clear that the parties can agree to exclude the jurisdiction of arbitrator in deciding interim applications. Under the Arbitration Act, parties are at liberty to enter into an arbitration agreement in respect of only a part of the disputes and the jurisdiction of the arbitrator can be circumscribed or restricted. There is

nothing illegal or contrary to public policy in such a contract. If the parties restrict the jurisdiction of the arbitrator only to a part of the dispute or provide that the arbitrator shall not entertain the interim applications, this only means that the parties had decided that the remaining disputes or interim applications are only to be raised before the competent Court and not before the Arbitrator.

11. I, therefore, consider that the arbitrator was right in holding that in view of peculiar arbitration clause where he has powers to decide only monetary compensation, he could not pass an order for return of stock. Even otherwise, the appellant was not going to suffer any irreparable injury in case the stocks were not ordered to be returned to the respondent by the arbitrator, since the appellant had made the cost of the goods as part of its claim to be adjudicated by the arbitrator.

12. In view of above situation, I find no force in this appeal. The appeal is hereby dismissed. No orders as to costs.

July 03, 2009 **SHIV NARAYAN DHINGRA J.**
rd