

# Reebok India Company vs Firoz Khan (Proprietor) & Anr on 19 March, 2021

**Author: Vibhu Bakhru**

**Bench: Vibhu Bakhru**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 369/2020

REEBOK INDIA COMPANY

Through: Mr Niraj Singh, Advocate. ....

versus

FIROZ KHAN (PROPRIETOR) & ANR. .... Respondents

Through: Mr Ashish Khorana, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 19.03.2021

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'A&C Act'), inter alia, praying that an Arbitrator be appointed to adjudicate the disputes between the parties.

2. The petitioner contends that it had entered into a Supply Agreement dated 15.09.2014 and 17.09.2014 with M/s Saket Industries, a sole proprietorship concern of respondent no.1, It is the petitioner's case that certain sums were due and payable to the petitioner in respect of supplies made under the said Agreements.

3. The petitioner contends that respondent no.1 has sought additional time to make the said payments and in the aforesaid context, the parties had entered into a Memorandum of Understanding on 06.09.2018 (hereafter the 'MoU'), whereby respondent no.1 had acknowledged that a sum of 1,00,34,772/- was due and payable by the Saket Industries and the same would be paid in accordance with the said MoU. The petitioner claims that respondent no.2 is one of the related parties of respondent no.1 and also agreed to discharge the said liability.

4. Subsequently, an Addendum dated 19.12.2018 was executed between the parties, whereby certain terms of the MoU were amended. However, the parties had agreed, in terms of Clause 6 of the said Addendum, that all other conditions of the MoU would remain unchanged and binding on the parties.

5. The MoU dated 06.09.2018 includes an Arbitration Clause, which is set out below:-

"7. Any dispute arising out of or in connection with interpretation of provision of this Memorandum of Understanding or any breach thereof which cannot be settled amicably between the parties will be referred to arbitration under a Sole Arbitrator in accordance with the Arbitration and Conciliation Act, 1996 including any statutory modification or re-enactment thereof. The Sole Arbitrator will be a retired High Court Judge appointed by the Managing Director of Reebok to whom the parties have no objection and shall not object in future also to this appointment of the Sole Arbitrator by the Managing Director of Reebok including for the reasons that the said Managing Director is connected to Reebok. The cost of appointment and arbitration proceeding shall be borne equally by the parties. The arbitration proceedings shall be conducted exclusively in Delhi. The decision of the Sole Arbitrator shall be final and binding on the parties."

6. The respondent disputes the existence of the aforesaid Arbitration Agreement. The respondent states that the MoU has been fabricated. However, neither of the respondents dispute their signatures on the MoU.

Respondent no.2 states that the guarantee was given more than a decade earlier and the same has been rendered void. Respondent no.2 further claims that the contents of the MoU are vague. He also denies receipt of any notice under Section 11 of the A&C Act.

7. Respondent no.1 also claims that the MoU is fabricated. The learned counsel appearing for the respondents further submits that the MoU had been signed several years ago, however the petitioner had purchased fresh stamp paper and had misused the documents signed by the respondent earlier. He further states that the principal disputes arose in connection with the Supply Agreements as according to the petitioner, the amounts due by the petitioner were not paid to it.

8. At this stage, this Court is not required to examine the merits of the dispute between the parties. The examination of the present petition is limited to examining the existence of an Arbitration Agreement. It is apparent that the MoU includes an Arbitration Clause. It is also conceded that the said MoU bears the signatures of the respondents. The contention that fresh stamp paper was purchased by the petitioner and had been misused to show that the MoU was entered into on 06.09.2018 is, ex facie, unmerited. The stamp paper was purchased on 27.07.2018. The opening part of the MoU has been printed on the stamp paper and that sheet also bears the signature of the respondents. Thus, the contention that the documents signed several years ago had been misused to fabricate the MoU is, ex facie, untenable. This Court had pointedly asked whether there is any averment in the reply stating that the signatures bearing on the MoU are forged. The learned counsel appearing for the respondents fairly states that there is no such averment that the signatures appearing on the MoU are not the signatures of the respondents. Thus, this Court is of the view that, prima facie, an Arbitration Agreement exists between the parties, whereby the parties had agreed to refer the disputes arising out of the MoU to a Sole Arbitrator to be appointed by the Managing Director of the petitioner. The parties had also agreed that the Arbitrator would be the

former Judge of a High Court.

9. The contention that the parties may be referred to arbitration in respect of the Supply Agreements dated 15.09.2014 and 17.09.2014, as there are disputes regarding the said agreements are unmerited. The respondents have not invoked arbitration under the said Agreements. Undisputedly, the said Agreements set out the obligations of the parties. The scope of the Arbitration Agreement extends to disputes "arising out of or in connection with the interpretation of provisions of Memorandum of Understanding or any breach thereof". The jurisdiction of the Arbitral Tribunal has been confined in to deciding the disputes that fall within the scope of the Arbitration Clause, as set out above.

10. The learned counsel for the respondent states that the MoU cannot be read on a standalone basis and it would be necessary to refer the earlier agreements. In this regard, it is clarified that this Court has not expressed any opinion on the merits of the disputes or the defence available to the respondents.

11. All rights and contentions of the parties are reserved. However, the Arbitral Tribunal's jurisdiction is confined to decide the disputes that fall within the scope of the Arbitration Clause as set out above.

12. The petitioner had invoked the Arbitration Clause by a notice dated 27.02.2020. However, the parties have been unable to concur on the appointment of an Arbitral Tribunal. The contention that the said notice had not been served to the respondent no.2 is also difficult to accept, since the petitioner has produced receipts showing dispatch of the notice to the address of the respondent no.2. In the present petition, respondent no.2's address is same as stated in the affidavits affirmed by the respondents and the Memo of Parties.

13. In view of the above, this Court consider it apposite to allow the present petition. Accordingly, Justice (Retired) Sunder Lal Bhayana, a former Judge of this Court (Mobile No.- 9871300028) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. The parties are at liberty to approach the learned Arbitrator for eliciting his consent and disclosure in terms of Section 12(1) of the A&C Act. Let the same be furnished before the next date of hearing.

14. List on 26.04.2021.

VIBHU BAKHRU, J MARCH 19, 2021 MK