# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## ORDINARY ORIGINAL CIVIL JURISDICTION

## ARBITRATION PETITION NO.141 OF 2018

Exelixi Management Company Pvt. Ltd. ....Petitioner

Versus

Nishi Retails Pvt. Ltd. ....Respondent

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**Mr. Harshad Inamdar** *a/w. Dinesh Masurkar i/b. Tejas Deshpande, for Petitioner.*

**Mr. Sajid Shamim** *a/w. Sharif Lakdawala i/b. S. Shamim & Co., for Respondent.*

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**CORAM: SOMASEKHAR SUNDARESAN, J.**

**DATE : FEBRUARY 23, 2026**

**Oral Judgement:**

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (***"the Act"***), challenging an *ex parte* Arbitral Award dated July 8, 2017 passed by the Learned Arbitrator (***"Impugned Award"***) on the premise that the Impugned Award is a product of arbitration proceedings that were initiated pursuant to an agreement that was never signed.

2. The disputes and differences between the Petitioner, Exelixi Management Company Pvt. Ltd. (***"Petitioner"***) and the Respondent,

Nishi Retails Pvt. Ltd. (***"Respondent"***) are in connection with retailing of toys under the brand name *Simba Toys*, for which the Petitioner was the master franchisee and the Respondent, based in Ahmedabad, was meant to be the sub-franchise.

3. The parties initially executed a Letter of Intent dated July 22, 2014 (***"LOI"***), which did not contain an arbitration agreement. Based on the LOI, the Respondent paid the Petitioner a sum of Rs.24.76 lakhs as an advance towards supply of the said products. Eventually, by an e-mail, the Petitioner sent a Draft Agreement to the Respondent on November 25, 2014, asking the Respondent to execute the same and have the same sent to by the Petitioner by courier. It is the Petitioner's case that the executed agreement was never received by the Petitioner and therefore, there is no arbitration agreement in existence. It is the Respondent's case that the Draft Agreement was printed, executed and couriered to the Petitioner.

4. Mr. Harshad Inamdar, Learned Advocate on behalf of the Petitioner would contend that the Section 11 proceedings initiated in the matter had been behind the back of the Petitioner. The arbitral proceedings too are contended to have been without the knowledge of the Petitioner. Learned Advocate for the Petitioner would point to the Registrar of Companies' (***RoC***) records (Page No.128 of the Petition at Exhibit "C") to indicate the address and official name of the Petitioner,

in order to submit that the correspondence sent to the Petitioner did not use the word *"Company"* in the name, and the Pin Code of the Petitioner is "302017" whereas the Pin Code used in the invocation letter and the termination notice is simply *"30"*.

5. The suggestions on behalf of the Petitioner are firmly rebuffed by Learned Advocate for the Respondent. Mr. Sajid Shamim, Learned Advocate on behalf of the Respondent would point to multiple letters with the same address with the same manner of name (without "Company" in the name) sent to the same address (with Pin Code "30") having been sent to the Petitioner which were well received by the Petitioner. He would point to record to indicate how the invocation notice, as well as the termination notice having been received. Purely by way of an example, from the Compilation of Documents tendered by the Respondent and forming part of the record, it is seen that letters dated March 16, 2015 and April 27, 2015, were indeed received by the Petitioner with the same address being indicated. Mr. Shamim would submit that some time in August 2015, the letters started coming back as refused.

6. The upshot of the submission is that merely because the word *"Company"* was not used in the name of the addressee, it was never an impediment for delivery and receipt of correspondence as is now being claimed by the Petitioner. The Petitioner simply started refused to take

delivery of the correspondence placing reliance on the absence of the word "Company" and the Pin Code difference. However, quite apart from that, the Learned Arbitral Tribunal has consistently communicated with the Petitioner on the e-mail id *sanjucs4u@gmail.com*, Mr. Shamim would submit. He would also point to the RoC's records to indicate that this is the very email ID that forms part of the RoC's records for the Petitioner, and therefore, the Learned Arbitrator has indeed been serving notices on the Petitioner on multiple occasions, at every stage of the arbitration proceedings.

7. It is seen that the Learned Arbitral Tribunal had been sending by email, minutes of the meetings held, scheduling of dates for the hearings, the draft issues, and notices for each of the hearings conducted in the course of the arbitration proceedings. Mr. Shamim would also point to a letter dated January 6, 2017 where the final hearing date was intimated with the correct and full Pin Code 302017 which has also been refused by the Petitioner.

8. Having heard the parties and having examined the record with their assistance, the short question that arises is whether the arbitration agreement was in existence and whether the arbitration proceedings had been conducted behind the back of the Petitioner or whether it was the Petitioner who was avoiding participating in the

proceedings hoping to rely on the alleged error in name and in Pin Code.

9. The Learned Arbitrator has examined the matter and upon appreciating the evidence before him, come to a view that despite service, the Respondent has chosen to remain absent from the proceedings. The Learned Arbitrator has commented that notices had been refused by the Respondent, and therefore, without the benefit of Statement of Defence, the Learned Arbitrator had been constrained to proceed to appreciate the evidence without the assistance of the Respondent.

10. Having examined the record, I find that in the correspondence with the Respondent, the Petitioner has alluded to the "agreement" (referred to in quotes by the Petitioner) to assert that any termination of the relationship within a period of five years could be contrary to the agreement between the parties. This was the ground for refusing to refund the monies paid by the Respondent. In particular, the Petitioner's email dated March 29, 2015 at 8.12 p.m. from one Mr. Prasad Sharma contains multiple references to the "agreement" and actually relies on the agreement to contend that the termination prior to the expiry of five years would be untenable.

11. In these circumstances, taking the totality of circumstances into account, the Learned Arbitral Tribunal being the master of the evidence

and thereby being the best judge of the quality and quantity of evidence, has returned reasonable and plausible findings that the dealings between the parties stood covered by the agreement which contains an arbitration clause. The agreement had been circulated by none other than the Petitioner and it is not for the Petitioner to contend that it did not participate in the making of the agreement.

12. The deposit that had been made prior to the Petitioner sending a draft of the agreement for execution to the Respondent and is acknowledged in the correspondence between the parties. It is the Petitioner that drafted the agreement in question and asked for it to be signed by the Respondent. Indeed the Respondent wanted some changes to the agreement, which are said to have been tabled on email after signing and couriering the document. However, it is the cancellation of franchise by *Simba Toys* that led to the breakdown and termination by the Respondent. The absence of an actual physical signature, which is claimed by the Petitioner would not come in the way of the reasonableness of the arbitrator's findings. Exchange of correspondence too can constitute an arbitration agreement under Section 7 of the Act. According to the Respondent, the agreements were printed, signed and couriered, which is why the Respondent does not have an agreement with the Petitioner's signature on it. If the Learned Arbitral Tribunal which is the master of the evidence has

reasonably found this to the plausible, it is not for this Court to disturb that, particularly taking into account the evident conduct of the Petitioner in avoiding service of notices and relying on the Pin Code from the RoC's records, when service of the notices by the Learned Arbitral Tribunal have been sent to the very email ID that also forms a part of the RoC's records.

13. It was always open to the Petitioner to participate in the proceedings and to prefer an application under Section 16 of the Act to demonstrate that the agreement did not exist. The Petitioner has chosen to stay away hoping to rely on the name being inaccurate for the word "Company" being missing and the Pin Code allegedly being wrong, although this had never been an impediment in acknowledged receipt of correspondence styled in the very same manner before the invocation notice was issued.

14. The conduct of the Petitioner as discernible from the material on record would indicate that the Petitioner chose not to participate in the arbitration proceedings and had the strategy of taking a chance by relying upon the purported errors, hoping that it would undermine an arbitral award that is adverse. It is a well-known principle that conduct and correspondence of the parties before disputes commence (*pre-litam motam*) would be a strong pointer to truthfulness as opposed to conduct after the dispute begins (*post litam motam*). I find no reason

to disagree with the findings of the Learned Arbitral Tribunal when the sole ground of challenge pressed is the error in the name and Pin Code, hoping that such error would be accepted to be a reasonable basis for holding the proceedings as being entirely behind the Petitioner's back.

15. Therefore, the Respondent has clearly made out a case to explain how the view taken by the Learned Arbitral Tribunal is a reasonable, logical and plausible view. The grounds on which the Impugned Award are being challenged do not carry credibility. In these circumstances, the two sole grounds of objection to the Impugned Award, do not satisfy me about a case being made out within the framework of Section 34 of the Act for interference with the Arbitral Award.

16. Consequently, the Petition is ***dismissed*** and the Impugned Award is left undisturbed.

17. Considering the nature of the objections raised and the conduct of the Petitioner, a strong case for imposition of costs is made out. The Respondent has spent the past twelve years running from pillar to post being given a run for its money by the conduct of the Petitioner, with a cynical and dishonest strategy, hoping to tire the Respondent out. Solely due to the persuasive skills of Mr. Inamdar, costs are kept at a token sum of Rs. 1.5 lakh, payable to the Respondent within a period of two weeks from the upload of this judgement on this Court's website.

18. 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.]