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

ARBITRATION PETITION NO. 394 OF 2015

VHB Life Sciences Ltd.	...Petitioner
VS	
M/s Vital Health care Pvt. Ltd.	...Respondent.

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Mr Anoop Patil a/w Rakesh Reddy Patil i/b Mr Pavan S. Patil for the Petitioner.
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**CORAM : S.C. GUPTE, J.
APRIL 16, 2015**

P.C. :

This Petition is filed by the Petitioner under Sections 11, 14 and 15 of the Arbitration and Conciliation Act, 1996 ("the Act"). The disputes between parties have arisen under a loan agreement dated 24 January 2005. As a result of disputes between the parties, the arbitration agreement contained in clause 19 of the loan agreement was invoked by the Petitioner. In an application filed under Section 11 of the Act, the disputes and differences were referred to the sole Arbitration of Mr Gautam Mehta, Advocate, by an order dated 16 September 2010. The arbitration proceedings commenced before the sole Arbitrator and reached up to the stage of filing of rejoinder by the Petitioner. It is the case of the Petitioner that the proceedings have not been further conducted by the sole Arbitrator after the stage of filing of rejoinder. It is the Petitioner's case that the Petitioner, in this behalf, addressed a letter dated 11 June 2013 to the sole Arbitrator through its newly appointed Advocate, informing the sole Arbitrator about the appointment of the Advocate. There was no response by the Arbitrator to this letter. Thereafter with a view to revive the arbitration proceedings, by their letter dated 6 January 2014, the Petitioner once again called upon the sole Arbitrator to proceed with the arbitration, and allowing the Petitioner's new Advocate to appear in the matter. Once again, there was no response to this letter from the sole Arbitrator. The Petitioner, in the premises, addressed a letter dated 9 May 2014 to the Respondent, with a copy to the latter's Advocates,

communicating the failure to act on the part of the arbitrator and termination of the mandate of the sole Arbitrator as a result. The Petitioner, in the premises, called upon the Respondent to concur in the appointment of another sole Arbitrator within a period of 30 days of the notice. There was no response to this letter by the Respondent, whilst the Advocates of the Respondent have communicated to the Petitioner that they were no longer appearing for the Respondent in the matter. The Petitioner has produced with the Petition the evidence of receipt of this communication by the Respondent and the response of its advocates.

2 In the facts noted above, there is a clear case made out of failure of the sole Arbitrator to act in the matter of reference without undue delay. The facts clearly disclose that the mandate of the Arbitrator has terminated as a result. The Petitioner's request for appointment of the substitute arbitrator has not been responded to by the Respondents. There is, thus, a case made out of failure of the parties to agree upon an arbitrator within a period of 30 days of the receipt of the request by the Petitioner in that behalf. There is, thus, a case for appointment of the substitute arbitrator under Section 11(5) read with Sections 14 and 15 of the Act. The Petition is, accordingly, made absolute in terms of prayer clauses (a) and (b). The disputes and differences between the parties are referred to the sole Arbitration of Shri Justice M.G.Gaikwad, a retired Judge of this Court. There shall be no order as to costs.

(S.C.GUPTE J.)