

In the High Court of Judicature at Madras

Dated : 18.09.2015

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.355 of 2014

M/s. Bio Rich International
Rep. by its Managing Partner,
Ali Ibrahim, Kakkanad West P.O., Kochi. .. Petitioner

-VS-

K-Link Healthcare (India) Pvt. Ltd.,
Door No.103A, 7th Floor, Navins
Presidium, Nelson Manickam Road,
Aminjikarai, Chennai. .. Respondent

Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, to appoint an Sole Arbitrator for settlement / determining the claim raised by the petitioner against the respondent.

For Petitioner : Mr.Ambili Menon

For Respondents : Mr.Kalayan Jabhak
for M/s.Surana & Surana

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O R D E R

The disputes inter se the parties arises from an agreement dated 01.09.2008 styled as 'Super Stockist Agreement' and its termination vide letter dated 05.10.2009. The disputes were partly resolved by payment under letter dated 19.10.2010.

2.It is the case of the learned counsel for the petitioner that various endeavours were made to resolve the disputes over the remaining amount, but nothing has been placed on record. The only document on record is the notice dated 05.10.2013 followed with a reply dated 30.10.2013 and thereafter, apparently a misadventure of filing a petition before the Kerala High Court, which suffered dismissal vide order dated 14.03.2014 on account of lack of territorial jurisdiction. It is, thereafter, the present petition has been filed. The arbitration clause, which governs the parties, is as under:

13.Governing Law & Arbitration

This Agreement shall be governed, interpreted and construed in accordance with the law of India and courts at Chennai alone shall have exclusive jurisdiction.

Arbitration: Any dispute between the COMPANY and the SUPER STOCKIST arising out of this agreement or in any manner connected to it shall be resorted under the India

Arbitration and Conciliation Act, 1996, by a sole Arbitrator to be appointed by the COMPANY. The award given by the sole Arbitrator shall be final and binding on both the Parties. The arbitration award shall be in English language and the arbitration proceedings would be held at Chennai."

3.Learned counsel for the respondent states that they have a dual objection to the petition: 1) the petitioner is a partnership firm not registered; and 2) the claim is ex facie barred by limitation.

4.In so far as the first aspect is concerned, the same is covered against the respondent in view of the judgment of this Court in **Jayamurugan Granite Exports, rep. By its Managing Partner vs. Sqny Granites, rep. By its Managing Partner, 2015 (5) CTC 1**, as also the decision of the Bombay High Court in Application No.47 of 2014, dated 15.04.2015 (Dattary N.Sawant and Anr. vs. Nitidn A.Mehta and Ors.).

5.In respect of the second plea, the same appears to be a mixed question of fact and law to be enquired into, in view of the notice having been sent just before the expiry of three years period of time.

6.The result is that disputes having arisen inter se the parties from the agreement which require adjudication subject to the plea of limitation, which would be examined by the Arbitrator, the disputes are liable to be so referred.

7.As agreed and proposed by the learned counsel for parties, I appoint **Mr.R.Narayanasamy, a retired Judicial Officer**, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties, subject to the plea of limitation. As requested by the learned counsel for parties, the arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

8.The original petition is, accordingly, allowed, subject to the condition that in the given facts of the case, initially the complete cost will be borne by the petitioner, which shall, however, form part of the main cause in the arbitration proceedings.

(S.K.K., CJ.)
18.09.2015

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Note: 1) Mark a copy to

(i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.

(ii) The Arbitrator, as referred above.

The Hon'ble Chief Justice

(sra)

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