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

+ ARB.P. 457/2015

ANIL SAXENA

..... Petitioner

Through Mr. Sheikh Imran Alam, Adv.

versus

CHEMPHARM INDUSTRIES (INDIA) PVT LTD & ORS

..... Respondents

Through Mr. Anil Sapra, Sr. Adv. with
Mr. Siddharth Handa & Ms. Ashna
Abrol, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

% **08.03.2016**

The present petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

The prayer of this petition has been strongly opposed by the learned Senior counsel appearing on behalf of the respondents who stated that the petitioner has not invoked the arbitration strictly as per the arbitration clause. He submits that the petitioner has failed to fulfil the amicable process of settlement. He also submits that no notice or any communication has been received from the petitioner seeking to resolve the disputes. Therefore, in the absence of the said compliance, the prayer made in the petition is not to be granted.

I have heard the learned counsel for the petitioner who is unable to point out any document or communication with regard to the proposal of settlement from the petitioner-side before filing of the petition. Counsel has admitted that no material is placed on record in this regard. However, he submits that during the pendency of the present petition, the matter was sent to the Mediation Centre and the settlement could not be arrived at between the parties. Thus, the process of amicable settlement has been discussed.

The arbitration clause in the matter reads as under:-

“12. Dispute Resolution

Any and all disputes or differences arising out of or relating to this Agreement shall be attempted to be resolved amicably by the Company and the Managing Director through mutual discussions. If any such dispute or difference is not so resolved, the same shall be referred to a sole arbitrator. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996. The venue of the arbitration shall be New Delhi. The arbitrator shall give a reasoned award.”

Learned Senior counsel appearing on behalf of the respondents has referred the following decisions in support of his submissions:

1. ***Munish Gupta & Ors. v. Ram Dass & Ors.*** 2002 (Suppl) Arb. LR 122 (Delhi).
2. ***ABLE Associate, Secunderabad v. KS. Ramakrishan Rao,*** (2007) 4 Arb. LR 219.
3. ***Haldiram Manufacturing Co. Pvt. Ltd v. DLF Commercial Complexes Ltd.,*** 193 (2012) DLT 410.

In one of the cases decided by this Court in ***Haldiram Manufacturing Co. Pvt. Ltd.*** (supra), in para 16 thereof, it was held as under:

“16. On a holistic reading of the said arbitration clause, it is decipherable that the first option given by the defendant to the plaintiff is for settlement of the disputes through mutual discussion and the option of arbitration would come at the second stage. The defendant has admittedly not called upon the plaintiff for any mutual discussion and therefore, the defendant itself has ignored Clause-34 of the said application form and having ignored the said clause itself, this Court does not find the defendant has any right to move the present application to seek rejection of the present plaint based on the alleged arbitration agreement. The defendant cannot be allowed to rely on the said clause for invoking arbitration proceedings and at the same time ignore the course of action of ‘mutual discussion’ contrived in the said clause. The conduct of the defendant clearly is contrary to the mandate of the said clause and thus the stage to invoke arbitration proceedings before exhausting the first stage of mutual discussion does not arise. However, at this stage the defendant cannot be allowed to take shelter under the said clause for invoking the arbitration proceedings when it has retracted from the same. The defendant cannot be allowed to approbate and reprobate and thus in the facts of the case at hand is not entitled to relief.”

In the absence of the compliance of pre-conditions as per the arbitration clause, the prayer made in the petition cannot be allowed. I do not agree with the submissions of the learned counsel for the petitioner, as there is a pre-condition in the arbitration clause. There was no discussion of settlement, as per the material placed on record, before filing of the present petition.

The present petition is accordingly disposed of. However, liberty is granted to the petitioner that before invoking the arbitration, the petitioner shall take the necessary steps for an amicable settlement and in case the settlement is not arrived at between the parties, the petitioner would file the

fresh petition under Section 11 of the Act.

MANMOHAN SINGH, J.

MARCH 08, 2016/vp