

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.274 of 2017

1. Delvin Formulations Pvt. Ltd.
No.25, 12th Cross Street,
Shastri Nagar, Adyar,
Chennai - 600 020,
rep. by its Director Mr.J.Jayaseelan

2. Delvin Surgicals Pvt. Ltd.
No.25, 12th Cross Street,
Shastri Nagar, Adyar,
Chennai - 600 020,
rep. by its Director Mr.J.Jayaseelan

.. Petitioners

Peekay Medi Equipment Limited
No.131, Sengipatti Village,
Trichy - Tanjore Main Road,
Thirumalaisumudram,
Thanjavur 613 402.

.. Respondent

Prayer: Petition filed under Section 11(5) of the Arbitration & Conciliation Act, 1996 to appoint a Sole Arbitrator to adjudicate and decide the disputes between the parties under the agreement for Exclusive Marketing, Distribution and Selling Arrangement dated 20.07.2015 and the Deed of Novation dated 15.09.2015 and to direct the respondent to pay the cost of the petition.

For Petitioner : Mr.T.K.Baskar

For Respondent : No Appearance

ORDER

This petition seeks appointment of a Sole Arbitrator to resolve the disputes between the petitioner and respondent that have arisen pursuant to a deed of Novation dated 15.09.2015.

2. An Agreement for Exclusive Marketing, Distribution and selling dated 20.07.2015, was executed between the parties wherein the exclusive marketing, distribution and selling rights of its products in Indian and global markets were entrusted to the respondent by the petitioners. The dispute resolution clause is set out in clause 6 of the agreement, which reads as under:

“6.The Parties shall seek to resolve any dispute, controversy, or claim arising out of or in connection with this Agreement, whether during its subsistence or thereafter, including without limitation, any dispute regarding the enforceability of any provision, through good faith negotiations between the Parties. If the Parties are unable to resolve the dispute, such dispute shall be settled by

Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof, and shall be referred to the Sole Arbitration of an Arbitrator mutually appointed by the parties in writing. The award given by such Arbitrator shall be final and binding on both the parties to this Agreement. In the event of an appointed Arbitrator dying or being unable or unwilling to act as arbitrator for any reason, the Parties, on such death of the arbitrator, or his inability or unwillingness to act as arbitrator, shall appoint another person as Arbitrator. Such person shall be entitled to proceed with the reference from the stage left by his predecessor. The venue of the arbitration proceedings shall be at Chennai, at the registered office of the DELVIN, which is presently at No.25, 12th Cross Street, Shastri Nagar, Adayar, Chennai 600020, and the language of the arbitration proceedings shall be English."

4. The aforesaid clause has been telescoped into the Deed of Novation between parties dated 15.09.2015 at clause 6 to the following effect:

"6.In the event of any dispute and/or

disagreement arising in connection with this Novation Deed, the dispute resolution clauses as provided for in the Principal Agreement shall apply.”

5. Notice appears to have been issued by the petitioner on 31.01.2017, invoking the Arbitration Clause and nominating Justice Mr.K.Gnanaprakasam, as sole Arbitrator duly received and acknowledged. In so far as there has been no response, the petitioner has approached this Court by way of the present petition.

6. Notice has been issued to the parties on 07.04.2017 and an affidavit of service has been filed indicating service of notice on 17.04.2017 on the respondent. The name of the respondent was printed in the cause list on 16.06.2017. Since there was no response or appearance on the part of the respondent, fresh steps were directed to be taken returnable by 03.07.2017. Today, Mr.T.K.Baskar, learned counsel appearing for the petitioner submits that fresh steps have been taken on 22.06.2017 and the respondent served. Postal acknowledgment to that effect has been filed. Despite the same, respondent has not chosen to appear before this Court.

7. A perusal of the petition and supporting documents would show that the parties have agreed to a dispute resolution clause.

8. In the aforesaid circumstances, I am inclined to order this petition and appoint Justice Mr.K.Gnanaprakasam, Former Judge of the Madras High Court, residing at AH-196, 3rd Street, 8th Main Road, Shanthi Colony, Anna Nagar, Chennai 600 040 (Phone Nos.044-26223355 & 9444554567), as the Sole Arbitrator to enter upon reference and after issuing notice to the parties and upon hearing them, endeavor to pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of this order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses, which shall be borne by both the parties equally. As requested, 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.

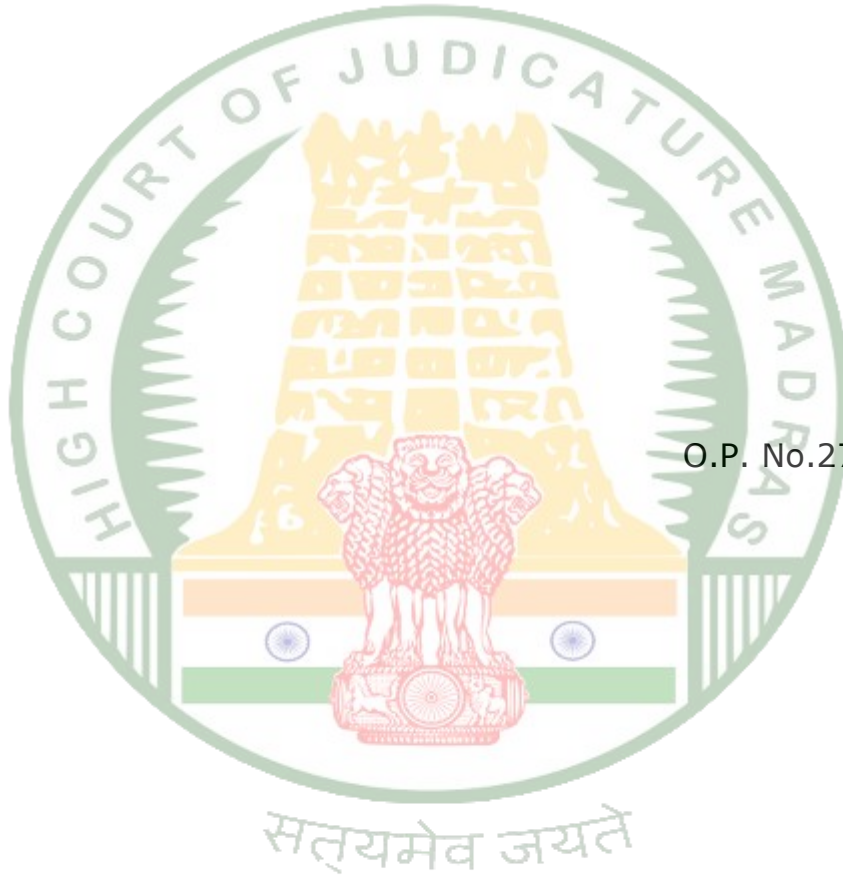
9.The Original Petition is accordingly allowed.

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05.07.2017

Dr.ANITA SUMANTH, J.

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