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

+ ARB.P. 182/2011

PADAM RAJ AGGARWAL

..... Petitioner

Through Mr.Anil K.Kher, Ms.Harsha &
Mr.D.R.Bhatia, Advocates

versus

GAMBRO NEXIM(INDIA) MEDICAL LIMITED..... Respondent

Through Ms.Ananya Bhattacharya, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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06.09.2017

1. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.
2. The parties had entered into an agreement to sell dated 01.08.2008 in respect of the property bearing No.47, Ring Road, Lajpat Nagar III, New Delhi- 110024 for a total sale consideration of Rs.24,50,00,000/-.
3. Admitted position is that there exists an arbitration clause in the agreement to sell dated 01.08.2008, which reads as follows:

“This is further to acknowledge and confirm that in case of any dispute or difference or ambiguity, the matter shall be subject to arbitration under Indian Arbitration & Conciliation Act, 1996.”
4. On 03.12.2013, this petition was disposed of in view of the settlement agreement dated 11.10.2013 between the parties, which was entered into

before the Delhi High Court, Mediation & Conciliation Centre, New Delhi. In terms of the said settlement agreement, the respondent had undertaken to pay a sum of Rs.50,00,000/- towards full and final settlement of all the claims of the petitioner along with interest.

5. It is the case of the petitioner that the respondent failed to abide the terms and conditions of the settlement agreement. Hence, the application being I.A.No.8244/2014 had been filed. This court on 16.02.2017 allowed this application and revived the present petition to its original number.

6. I have heard the learned counsel for the parties.

7. The learned counsel for the respondent has opposed the reference of disputes to the arbitration. She relies upon the judgment of this court in OMP 492/2008 dated 04.04.2011 to contend that this court has already rendered a *prima facie* finding that the petitioner was not ready and willing to complete the transaction. The injunction application filed by the petitioner was dismissed. She further points out that before the Division Bench in an appeal filed by the petitioner on the very first hearing the court had passed an interim order subject to the petitioner depositing a sum of Rs.10 crores. On the next date, i.e. on 22.09.2011, the petitioner withdrew the appeal pointing out that an application under Section 11 of the Act is already pending. She submits that in view of this finding, no relief of specific performance can be sought by the petitioner. She further submits that in view of the settlement agreement between the parties, there is no dispute which needs to be referred to arbitration.

8. The learned senior counsel for the petitioner submits that he does not wish to seek relief of specific performance before the learned arbitrator.

9. Merely, because in a petition under Section 9 of the Act, certain

observations are made on the merits of the case of the petitioner pertaining to his plea for passing of an interim order would not imply that no disputes exist between the parties.

10. Accordingly, I appoint Mr.Sandeep Agarwal, Sr.Advocate (Mobile No.9811044426) as a sole arbitrator to adjudicate the dispute between the parties. The arbitration shall take place under the aegis of Delhi International Arbitration Centre, New Delhi (*in short 'The DIAC'*). A copy of this order be sent to the DIAC and to Mr.Sandeep Agarwal, Sr.Advocate, Chamber No.140, Lawyers' Chamber, Delhi High Court, New Delhi.

11. Petition stands disposed of as above.

JAYANT NATH, J.

SEPTEMBER 06, 2017/v