

\$~20

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

+ O.M.P.(MISC.)(COMM.) 10/2017

M/S. BIOTRONIK MEDICAL DEVICES INDIA PVT. LTD.

..... Decree Holder

Through: Mr.Somesh Chandra, Adv.

versus

M/S. SURGE SCION MEDICAL DEVICES (P) LTD.

..... Judgement Debtor

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

%

23.10.2017

This petition has been filed under Section 29A of the Arbitration and Conciliation Act, 1996 (in short Act), praying for extension of period for the completion of arbitral proceedings captioned as M/s Biotronik Medical Devices India Pvt. Ltd. v. M/s Surge Scion Medical Devices (P) Ltd.

The dispute between the parties have arisen out of the agreement dated 03.06.2009, which was renewed from time to time, the last renewal being an agreement dated 01.01.2014. The dispute between the parties were referred by the petitioner/claimant to Mr.Rajesh Kumar, Additional District and Session Judge (Retired) who was appointed as sole arbitrator by the Managing Director of the petitioner/ claimant. The learned Sole Arbitrator entered into reference on 25.02.2016. As the respondent failed to appear before the Sole Arbitrator, it was proceeded ex-parte vide order dated 20.04.2016.

I am informed that the matter was heard ex-parte and was reserved for passing of an award on 01.11.2016, however, thereafter the learned Sole Arbitrator was hospitalised and ultimately expired on 12.01.2017.

The petitioner filed the present petition on 05.07.2017 seeking extension of time for completion of arbitral proceedings. Notice on the petition was issued to the respondent vide order dated 11.07.2017. Though, the office report dated 16.10.2017 mentions that the notice issued through ordinary process has remained unserved on the respondent with the remarks “vacated/no such company”, the petitioner has filed an affidavit of service dated 25.09.2017 enclosing therewith the postal receipt for sending the notice through speed post as also the tracking report which shows that the notice has been delivered to the respondent.

In spite of the pass over none appears on behalf of the respondent. As noticed above, even before the learned Sole Arbitrator the respondent had chosen not to appear and had been proceeded ex-parte.

It is clear from the averment made in the petition that the award could not be made within the time limit prescribed under Section 29A of the Act for the reason beyond the control of the petitioner as also the learned Sole Arbitrator. The said time had expired on 24.02.2017. The extended period of six months, even if was to be allowed jointly by the parties, would also have expired in August 2017, however, in absence of the respondent from the proceedings, such extension was not possible due to which the petitioner had to file the present petition.

In view of the above and taking note of the fact that the sole arbitrator as appointed by the petitioner/claimant in accordance with the

terms of the agreement has expired, I extend the time period referred to in Section 29A(1) of the Act for a further period of six months with effect from 24.08.2017.

Learned counsel for the petitioner/claimant waives the right of the petitioner to appoint substitute arbitrator and requests this Court to refer the same to Delhi International Arbitration Centre. Accordingly, the matter is referred to Delhi International Arbitration Centre (DIAC) for appointment of the arbitrator, who shall continue from the stage already reached and on the basis of the evidence and the material already placed on record before the earlier appointed Sole Arbitrator. Records of the proceedings held before the earlier Sole Arbitrator, would be collected by the petitioner/claimant and will be filed before DIAC within a period of three weeks from today.

It is made clear that this Court has not expressed any opinion on the validity of the earlier arbitration or the proceedings taken by it and all such questions are left open to be adjudicated in appropriate proceedings and in accordance with law.

The petition is accordingly disposed of with no order as to cost.

NAVIN CHAWLA, J

OCTOBER 23, 2017/vp