

\$~1

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

+ ARB.P. 25/2017

ANIL SAXENA

..... Petitioner

Through: Mr Sheikh Imran, Advocate.

versus

CHEMPHARM INDUSTRIES (INDIA) PVT
LTD & ORS.

..... Respondents

Through: Mr Anil Sapra, Senior Advocate with
Ms Rupali Kapoor and Ms Piyusha
Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **08.03.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter the 'Act') seeking appointment of an Arbitrator to adjudicate the disputes that have arisen between the parties in connection with the agreement dated 06.03.2013.

2. The said agreement contains an arbitration clause, which is set out below:-

"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.”

3. In view of the disputes, the petitioner invoked the arbitration clause and issued a notice dated 03.02.2015 calling upon the respondents to pay a sum of ₹1,07,97,035/-, which according to the petitioner was due as on 31.01.2015 along with interest and other allowances. The petitioner further stated that in the event the said amounts were not paid the petitioner would be constrained to approach this Court for appointment of a Sole Arbitrator. Since, no response was received to the said letter, the petitioner sent another letter dated 24.02.2015 repeating its demand for payment of money and informing the respondent that on failure to do so the petitioner would be constrained to approach this Court. It is after the respondents received the said letter that respondent no. 1 responded to the initial letter dated 03.02.2015 by a letter dated 18.03.2015. The respondent disputed the averments made by the petitioner and further rejected the request of the petitioner for appointment of an Arbitrator on the ground that the petitioner had not made efforts to amicably resolve the disputes which was a pre-condition for referring the disputes to the arbitration.

4. In the aforesaid circumstances, the petitioner approached this Court by way of a petition (ARB.P.No.457/2015) under Section 11 of the Act. In that petition, the respondent once again took the technical objection that the petitioner had not made efforts to amicably resolve the disputes. In view of the said contention, the said petition was disposed of by an order dated 08.03.2016 directing that the petitioner should take the necessary steps to attempt an amicable settlement and file a fresh petition if the efforts for

settlement failed.

5. It is not disputed that the parties entered into negotiation for amicable settlement of disputes. Mr Sapra, learned senior counsel appearing for the respondents also states that certain drafts of settlements were exchanged, however, the parties were unable to resolve their disputes amicably.

6. It is in the aforesaid circumstances, that the petitioner has once again approached this Court under Section 11 of the Act. Curiously, one of the objection now raised by the respondents still remains that the petitioner has not followed the procedure by not calling upon the respondents to concur to appointment of an Arbitrator. Mr Sapra, learned senior counsel for the respondents further earnestly contends that the procedure as required under the clause has not been followed since no request has been made by the petitioner to the respondent for concurrence in the appointment of the Arbitrator.

7. The second objection taken by Mr Sapra, learned counsel for the respondents is that respondent nos.2 & 3 are not parties to the agreement dated 06.03.2013.

8. Insofar as the respondents objection that no notice of arbitration was given, this Court finds the same to be bereft of any merit. The arbitration clause expressly provided that if the dispute or difference is not resolved the same shall be referred to a Sole Arbitrator. Admittedly, the efforts were made by parties to resolve the disputes but the said efforts have failed. The insistence of the respondents that further time be granted is only a device to further prolong the matters. It is seen that the petitioner had invoked the

arbitration clause as early as on 03.02.2015, however, the respondents have successfully prevented the disputes from being referred to arbitration by adopting technical pleas.

9. At this stage, the learned counsel for the parties have expressed their willingness that Justice Kailash Gambhir (Retired), a former Judge of this Court be appointed as an Arbitrator. Accordingly, with the consent of the parties, Justice Kailash Gambhir (Retired) (Mobile No. 9871300033) is appointed as the Sole Arbitrator to adjudicate the disputes that have arisen between the parties to the agreement dated 06.03.2013. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The fees of the Arbitrator shall be fixed in consultation with the counsel for the parties. The parties are at liberty to approach the Arbitrator for eliciting the necessary disclosure and for further proceedings.

10. The petition is disposed of.

VIBHU BAKHRU, J

MARCH 08, 2017

MK