IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 491 OF 2017

Amanta Healthcare Ltd. …Petitioner
vs.
Bayer Pharmaceuticals Pvt.Ltd. ...Respondent

Mr.Sahil Mahajan for Petitioner.
Mr.Amol Doijode for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 8 OCTOBER 2018

P.C. :

The arbitration petition challenges an award passed by a sole Arbitrator in the matter of disputes between the parties under a loan licence agreement.

2 It is the case of the Respondent, who was the claimant in the arbitration reference, that it had appointed the Petitioner herein (Respondent to the reference) on a non-exclusive basis to manufacture, sub-divide, pack and repack (as the case may be) products marketed by the Respondent on a loan licence basis on mutually agreed terms and conditions. It was the case of the Respondent that despite assurances given from time to time that the Petitioner was ready to take up the production work, the Petitioner could not do so and finally expressed its inability to manufacture the products at its Goa plant and thereby committed a breach of the agreement. The Respondent claimed to have incurred substantial expenses for matters such as generation of warehouse in SAP, creation of CFA at Goa, obtaining stock and sale licence at CFA, TAC audit expenses,

travelling expenses, registration of VAT/CST, etc. in all aggregating to Rs.16,39,500/-, which expenses were sought to be recovered from the Petitioner, in addition to the sum of Rs.1 crore, by way of damages. The learned Arbitrator, by his impugned award, held that there was a valid and subsisting agreement between the parties, under which the Petitioner was appointed as a manufacturer on a non-exclusive basis of certain products of the Respondent as a loan licensee and that the Petitioner had not performed its obligations under the agreement and committed breach thereof. The Arbitrator further held that the Respondent had, by documentary and oral evidence produced before the Arbitrator, proved that the expenses aggregating to Rs.16,39,500/- were incurred by him and that these were liable to be reimbursed by the Petitioner. The Arbitrator rejected the Respondent's claim in damages in the sum of Rs.1 crore and instead awarded damages of Rs.16,39,500/- with interest at the rate of 12% per annum from the date of the invocation of the arbitration agreement and till payment or realization.

3 Learned Counsel for the Petitioner presses his challenge to the impugned award on two grounds. Learned Counsel, firstly, submits that the award is beyond the terms of submission and, in any event, the conclusion is in contravention of public policy and vitiated by a patent illegality. Learned Counsel submits that some of the expenses (for example, expenses for plant creation and TAC audit) were incurred prior to the execution of the agreement between the parties. The Arbitrator’s conclusion in this behalf that the expenses incurred prior to the execution of the agreement as also the other expenses incurred subsequent thereto were in relation to the performance of the obligations contained in the agreement and

concerned the operation or effect of the agreement and as such, the claim for their reimbursement was within the scope and ambit of the arbitration agreement is clearly a fair and proper conclusion. The terms of submission required the Arbitrator to decide if the Respondent suffered any loss or damages as a result of the breach of contract on the part of the Petitioner. The Arbitrator found in favour of the Respondent to the extent of damages of Rs.16,39,500/-. This is clearly a possible conclusion, which is supported by evidence. There is no irrelevant material considered by the Arbitrator and no relevant material disregarded by him in coming to the conclusion. It cannot, in the premises, be termed as a determination beyond the terms of submission. So also, it cannot be said to be either in contravention of public policy of India or vitiated by any patent illegality appearing on the face of the award.

4 Learned Counsel, secondly, submits that there was no breach of the loan licence agreement on the part of the Petitioner, since the deficiency in the manufacturing facility was well within the knowledge of the Respondent and was also reported in their TAC audit report. Whether or not the Petitioner committed breach of the loan licence agreement is a mixed question of law and facts. Neither the assessment of evidence by the Arbitrator nor the construction of agreement and application of law to the facts and construction so found by the Arbitrator, is open to challenge under Section 34 of the Arbitration and Conciliation Act, 1996. The assessment of evidence, construction of the agreement and application of law to such evidence and agreement clearly exhibits a possible view. It is not a view which shocks the conscience of the court or a view which no fair or judiciously minded person could have taken or which could be termed as

an impossible view. There is, accordingly, no merit in the ground of challenge.

5 In the premises, there is no merit in the arbitration petition. The petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)