

\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 91/2015**
M/S VISIONINDIA AYURVED PVT LTD

..... Petitioner

Through: Mr.S.P. Srivastava, Adv.

versus

N.K.SHARMA

..... Respondent

Through: Mr.Uttam Datt, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

%

09.03.2018

IA No. 6476/2017

This is an application seeking condonation of delay in filing of the reply to IA 282/2017.

For the reasons stated in the application, the delay is condoned and the reply is taken on record.

IA No. 282/2017

This is an application seeking recall of order dated 14.12.2016 passed by this Court disposing of the petition filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Clearing and Forwarding Agency Agreement (hereinafter referred to as the C&F Agreement) dated 01.09.2013. This Court had dismissed the above petition recording the submission of the counsel for the respondent that the disputes had already been settled between the parties. However, on that date there was no representation on behalf of the petitioner.

In the present application it is submitted that the petitioner had duly

instructed its counsel to appear before this Court on that day, however, due to certain reasons as stated in the application, the counsel could not appear and therefore, the non appearance of the counsel was for reasons beyond the control of the counsel for the petitioner.

As far as the Settlement Agreement is concerned, it is stated that the settlement was only with respect to the release of the medicines that were lying in the custody of the respondent and was confined only to the claim of the petitioner made under OMP (I) 75/2015 and not to the other claims as raised in the present petition. The counsel for the petitioner further submits that in case the settlement was to cover even the claims raised in the present petition, there would have been no necessity for the petitioner to have filed IA No. 18756/2015, by which it has sought to place additional documents on record even after the Settlement Agreement had been executed.

Learned counsel for the respondent disputes the submissions made by the counsel for the petitioner. He submits that the Settlement Agreement itself records that all disputes with respect to the C&F Agreement stands settled under the Settlement Agreement. He further submits that the application now filed in the petition is raising new disputes with respect to the Settlement Agreement itself and the same certainly cannot be arbitrable.

Without going into the submissions made by the counsel for the respondent, as the same would relate to the maintainability of the disputes that may be raised by the petitioner before the Arbitrator, I find that the petitioner / appellant is able to show sufficient cause for its non appearance on 14.12.2016. Further, the effect of the Settlement Agreement on the claims that may be raised by the petitioner before the Arbitrator would have to be determined by the Arbitrator after hearing the parties. For the reasons stated

in the present application it is sufficient to record that there is a dispute whether the Settlement Agreement constituted a full and final discharge of all claims of *inter se* the parties under the C&F Agreement dated 01.09.2013.

I accordingly allow the present application and recall the order dated 14.12.2016 and restore the petition to its original number.

ARB.P. 91/2015

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 filed by the petitioner seeking appointment of a Sole Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the C&F Agreement dated 01.09.2013. Admittedly, the agreement contains a Arbitration Agreement between the parties.

With the consent of the parties, I appoint, Mr.Abhijat, Advocate (R/o A-80, Defence Colony, New Delhi-110024, Mobile: 9811800833) as a Sole Arbitrator to adjudicate the disputes that have arisen between the parties. The question whether the Settlement Agreement amounts to a full and final settlement of all the claims of the petitioner under the C&F Agreement shall be considered by the Arbitrator uninfluenced by any observation made by me in this order and may even be considered as a preliminary issue. Equally, whether the claims of the petitioner arising out of the Settlement Agreement or breach thereof are itself arbitrable, shall also be determined by the Arbitrator.

The Arbitrator is entitled to charge the fee in accordance with the Fourth Schedule of the Act.

The petition is allowed in the above terms, with no order as to costs.

Dasti.

NAVIN CHAWLA, J

MARCH 09, 2018/rv