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

\+ ARB.P. 767/2016

M/S AYURVET LED ..... Petitioner

Through: Mr.S.K.Makkar, Sr. Adv. with Ms.Meenakshi Singh, Ms.Saumya Gupta, Advs.

versus

M/S B.S. ENTERPRISES & ANR ..... Respondents

Through: Ms.Shweta Bhaarti, Mr.Jyoti K.Chaudhary, Ms.Katyani Mahendru, Advs.

(57) O.M.P. (COMM) 212/2016

B.S.ENTERPRISES ..... Petitioner

Through: Ms.Shweta Bhaarti, Mr.Jyoti K.Chaudhary, Ms.Katyani Mahendru, Advs.

versus

AYURVET LTD. ..... Respondent

Through: Mr.S.K.Makkar, Sr. Adv. with Ms.Meenakshi Singh, Ms.Saumya Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **18.09.2018**

These petitions under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') have been filed by the parties to the arbitration proceedings challenging the Award dated 14th April, 2015 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Clearing and Forwarding Agreement dated 1st July, 2000 and the Agreement dated 1st July, 2008 as extended by the parties vide letter dated 29th June, 2011.

M/s B.S. Enterprises is hereinafter referred to as the claimant/petitioner while M/s Ayurvet Ltd. is hereinafter referred to as the respondent.

The claimant filed its Statement of Claim before the Arbitrator raising the following claims:-

No.	***Particulars.***	***Amt. (In INR)***
1.	*Freight Upcountry (As per agreement)*	*11,85,354.00*
2.	*Cartages Local & Upcountry (As per agreement)*	*8,90,584.00*
3.	*Difference of Interest on Security Deposit*	*15,33,712.00*
4.	*Expenses & Commission short received*	
	Expenses	*84255.00*
	Comm.	*15750.00*
5.	*Sales Tax Deptt.expenses 2001-02 (out of pocket expenses)*	*25,000.00*
6.	*Service Tax not reimbursed by the company on variable expenses*	*371315.94*
7.	*Service Tax Deptt. expenses 2004-05 (out of pocket expenses)*	*35,000.00*
8.	*Review of commission from 2.5%to 3.5%*	*15,49,654.00*
9.	*Security Deposit*	*10,00,000.00*
10.	*Commission Aug11 to Nov. 11*	*4,52,042.00*
11.	*Variable expenses June 2011 to Nov.2011*	*75,297.00*
12.	*Retainer ship charges paid to Sales tax consultant*	*3,52,000.00*
13.	*Interest on delay payment on commission received*	*3,44,151.00*
14.	*Nepal Sales Commission*	*4,20,834.00*
15.	*Administrative Expenses from Dec2011-March 2012*	*3,01,438.00*
16.	*Int.@15% on claim Rs.33,79,825.75 (Dec11- June13)*	*8,02,709.33*
	TOTAL	*94,39,097.00*

The Arbitrator vide Impugned Award has allowed the claim of the petitioner only to the limited extent of the refund of security deposit along with interest @15% per annum.

Counsel for the petitioner submits that the Arbitrator has erred in not considering the e-mail dated 11th January, 2012 issued by the respondent to the petitioner acknowledging that apart from the security deposit and interest thereon, certain other expenses, commission and 'sales tax work' were also payable to the petitioner.

Counsel for the respondent was given time to seek instructions on this aspect from the respondent. He submits that the amount which is mentioned in the chart annexed with the e-mail dated 11th January, 2012 with respect to the Sales Commission, expenses and 'Sales Tax Work' has indeed not been paid by the respondent to the petitioner, however, the respondent is ready and willing to pay this amount. He further submits that this amount along with other awarded amount shall be paid to the petitioner within four weeks from today.

In view of the above, the respondent shall pay to the petitioner the awarded amount as also the Sales Commission, expenses and 'Sale Tax Work' as have been mentioned in the chart annexed with the e-mail dated 11th January, 2012 alongwith interest within four weeks from today.

In the chart annexed with the e-mail dated 11th January, 2012, there is also a mention of the security deposit, security deposit interest and difference of interest. As these amounts already stand covered by the Impugned Award, they shall be governed by the directions given in the Award only.

In view of the above, while allowing OMP(Comm.) No.212/2016 and dismissing Arb. P. No.767/2016, the Impugned Award is modified to the above stated limited extent. The parties shall bear their own costs.

NAVIN CHAWLA, J

SEPTEMBER 18, 2018
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