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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 99/2019

ZIMMER INDIA PVT. LTD.

..... Petitioner

Through: Mr.R. Jawahar Lal, Mr.Siddharth
Bawa & Mr.Shyamal Anand, Advs.

versus

PRIME HEALTHCARE

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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08.03.2019

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Distribution Agreement dated 08.05.2014 executed between the parties.

The said Distribution Agreement contains an Arbitration Agreement in form of Clause 22 read with Item No. 10 and 11 of the Reference Schedule, which is reproduced hereinbelow:-

"22. DISPUTE RESOLUTION AND ARBITRATION

- 22.1** *If a dispute arises out of or relates to this Agreement or the breach, termination, validity or subject matter of the Agreement, or as to any related claim at law, in equity or under any relevant law ("Dispute"), either Party may give notice to the other of that Dispute and the Parties within 7 days will meet in good faith and use their best efforts to resolve the Dispute.*
- 22.2** *If the Dispute is not resolved within 14 days following the meeting between the Parties, then the Parties agree to*

submit Dispute to alternative dispute resolution ("ADR") in accordance with Item 10 of the Reference Schedule and with the costs of ADR to be shared equally by both parties. Each Party will be responsible for its own costs relating to attorney's fees, travel expenses, witness fees, discovery and other fees.

- 22.3 *If the Dispute is not resolved by ADR (or if Item 10 does not provide for ADR), then either Party may commence legal proceedings subject to Clause 21 of this Agreement. Nothing in this Clause 22 prevents either Party from seeking urgent interlocutory relief from a court at any time.*
- 22.4 *Where Item 10 provides for arbitration, then both Parties will be bound by any decision of the arbitrator(s), which can be registered and enforced in any country where either Party is authorised to carry on business, Subject to that country's laws and regulations governing the registration and enforcement of arbitral judgments.*
- 22.5 *Nothing in this clause 22 will prejudice the right of either Party to apply to a court at any stage for urgent injunctive or declaratory relief.*

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<i>Item 10-Place and Rule of ADR (Clause 22)</i>	<i>Arbitration in New Delhi wherein each Party appoints its own arbitrator, then the two Party-appointed arbitrators shall jointly appoint a third Arbitrator within fifteen (15) days to be the president of the arbitral panel. Arbitration to be held in accordance with Arbitration & Conciliation Act 1996 (or any replacement law) and language to be</i>
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	<i>English.</i>
<i>Item 11-Governing Law (Clause 21)</i>	<i>Law of India</i>

Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 22.09.2018 appointing its nominee Arbitrator.

The respondent, vide its reply dated 05.10.2018 sought further time to reply to the said notice. Subsequently, by its further reply dated 13.12.2018, while refuting the claims of the petitioner, the respondent refused to appoint its nominee Arbitrator on the ground that the parties were to first explore the possibility of the appointment of a Sole Arbitrator and since no attempts for the same were made, the question of appointing a nominee Arbitrator did not arise.

In view of the above reply, the petitioner filed the present petition.

Notice on this petition was issued to the respondent vide order dated 13.02.2019. The counsel for the petitioner has handed over the proof of sending such notice through courier as well through speed post alongwith the tracking report of the same showing delivery of the notice on the respondent.

In spite of the pass over being granted, none appears for the respondent.

As the existence of the Arbitration Agreement and due invocation thereof remain uncontested, I see no impediment in appointing a Nominee Arbitrator for the respondent. As far as the plea of the respondent that attempts were to be made to appoint a Sole Arbitrator is concerned, the same is not borne out of the Arbitration Agreement.

In view of the above, I appoint **Mr. Kamlesh Kumar**, Retd. District & Sessions Judge, Delhi (R/o F-149, LIC Colony, Paschim Vihar, New Delhi-110087, Mobile: 9971208844) as the Nominee Arbitrator of the respondent.

The Arbitrators shall give a disclosure under Section 12 of the Act before proceeding with the reference. They shall further proceed to appoint the Presiding Arbitrator in accordance with the Act.

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

NAVIN CHAWLA, J

MARCH 08, 2019/rv