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

% ***Date of decision: 17.12.2021***

+ **ARB.P. 1130/2021**

M/S SHREE ADITYA MEDICARD.COM Petitioner

**Through Mr. Nagendra Kumar, Adv.
versus**

**M/S TATA1MG TECHNOLOGIES PVT. LTD.
(EARLIER KNOWN AS 1 MG TECHNOLOGIES
PVT. LTD.) Respondents**

Through Ms. Simran Tandon, Adv.

**CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

J U D G M E N T (oral)

1. The present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Sole Arbitrator to adjudicate the disputes with respondents.
2. As per the averments made in the present petition, petitioner is a proprietorship firm engaged in the business of stocking, marketing, distribution, dispensation and sale of various pharmaceutical, healthcare and personal care products, including drugs as defined under the Drugs Act which can be sold against a valid prescription issued by a registered medical practitioner.

3. It is further averred in the petition that in January, 2017, respondents approached the petitioner representing that the respondent is operating two internet based web-portals namely www.lmg.com and www.lmgayush.com and for the said purpose, it was looking for a vendor partner in NOIDA having requisite capabilities and infrastructure, from where the respondents can source the medicines against the orders procured by it through its aforesaid websites invoice (in the name of the customer as contained in the order placed by the respondents) to the logistic team of the respondents as per order placed by the respondents. Respondents were to take the order from customers, collect payment from the customers, deliver the medicines to the customers and interact with the customers and the petitioner had nothing to do with the customer.

4. At the hearing, learned counsel for petitioner has submitted that based on the said representations and assurances, the respondents claimed that since all the work like taking orders, delivering medicines, collection of payments, interaction with the customers etc. were being undertaken by it, it would deduct upfront margin on all sales @ 18.5% in case of prescribed drugs and 8% - 18.5% in case of OTC drugs. Since the payment was to be collected by the respondents, they claimed to deduct its margin of

commission in advance and pay the balance to the petitioner.

5. Further, it is submitted that based on the said oral understanding, the respondent commenced placing orders upon the petitioner and started taking medicines w.e.f. 01.02.2017. Subsequently, a Facilitation agreement dated 08.02.2017 was executed between the parties and the said facilitation agreement dated 08.02.2017 was further extended vide its letter dated 31.01.2018 for a further period of two years beginning from 01.02.2018 to 31.01.2020 and once again at the insistence of the respondents, the petitioner created additional facilities and infrastructure. Thereafter, in July, 2018, the respondents commenced withholding sales recoverable of the petitioner. On 14.10.2019, respondents terminated the Facilitation Agreement prematurely. Thereafter, disputes arose between the parties.

6. Learned counsel for petitioner submits that petitioner issued Legal Notice of Demand dated 26.12.2019 recalling its entire dues. Thereafter, on 22.10.2020, petitioner filed its commercial suit for recovery of its dues before the learned District Judge (Commercial Courts) New Delhi being CS (COMM) No. 492 of 2020.

7. On 07.01.2021, respondents filed their written statement and application under Order VII Rule 11 CPC invoking arbitration clause in

facilitation agreement. On 23.08.2021, learned District Judge (Commercial Courts) New Delhi passed its order referring the parties to arbitration in accordance with Section 8 (1) of Arbitration and Conciliation Act, 1996.

8. Subsequently, on 26.08.2021, petitioner through counsel issued letter/notice to the respondents and their counsel seeking their consent to appoint Justice Brijesh Sethi (Retd.) the sole Arbitrator. In reply to the said notice, respondents denying their consent and proposed another name, i.e. Mr. Narendra Kalra, Advocate, the sole Arbitrator. Since the parties could not arrive at mutual consensus upon name of sole arbitrator, Hence, the present petition has been filed.

9. During the course of hearing, learned counsel appearing for parties pressed that this Court may appoint Sole Arbitrator to adjudicate the dispute between the parties.

10. In view of the above and with the consent of parties, the present petition is allowed. Accordingly, **Mr. Charan Singh Verma, Advocate (Mobile: 9871573637)** is appointed sole Arbitrator in this petition to adjudicate the dispute between the parties.

11. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

12. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.
13. The present petition stands disposed of accordingly.
14. A copy of this order be sent to the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 17, 2021
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