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Arb.O.P (Com.Div.) No.106 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No.106 of 2022

Accord Life Spec Private Limited
Represented by its Chief Executive Officer
Mr.Manish Choube
29, Thilak Street
T Nagar, Chennai – 600 017

... Petitioner

Vs.

M/s.Safelife Pharma Speciality Private Limited
Represented by its Director
Girish Mishra
Gala No.8, Duct Line, Near Kabristan
Near Khindi Pada, Bhandup West
Mumbai – 400 078

... Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate all the dispute arising out of Agreement for Appointment of Super Distributor dated 03.06.2020.

For Petitioner : Mr.Mohammed Fayaz Ali



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ORDER

This order will dispose of the captioned matter.

2. Captioned matter was first listed before this Court on 15.03.2022 and the proceedings made by this Court in that listing reads as follows:

'Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 09.02.2022 under Section 11(6) of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity] with a prayer for appointment of an Arbitrator.

2. Mr.Mohammed Fayaz Ali, learned counsel for petitioner who is before this Court submits that the captioned Arb OP is predicated on clause 46 (Page No.12 of the typed set of papers) of an agreement dated 03.06.2020 captioned 'AGREEMENT FOR APPOINTMENT OF SUPER DISTRIBUTOR'. To be noted, this agreement dated 03.06.2020 shall hereinafter be referred to as 'primary agreement' for the sake of convenience and clarity.

3. Aforementioned clause 46 of primary agreement reads as follows:

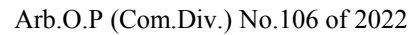
'46. All disputes and questions whatsoever which shall either during the continuance of the arrangements or afterwards arise between the parties hereto or between any party hereto and the legal



representatives of either party touching this appointment or construction or application of any clause herein contained or as to any act, deed or omission of either party under this agreement or any other matter, in any way relating to or arising out of any of this arrangements shall be referred to a sole arbitrator in Chennai in case parties agree upon or otherwise to two arbitrators one to be appointed by each party to the difference who in turn shall appoint an umpire proceeding with the difference and the clause shall be deemed to be a submission to arbitration in accordance with and subject to the provisions of the Indian Arbitration Act, 1940 or any statutory modification thereof for the time being in force. The arbitration or proceedings shall take place at Chennai, the award will be made at mumbai and only the Competent Courts at Chennai shall have jurisdiction over such arbitration and/or award.'

4. Learned counsel submits that the aforementioned clause 46 of primary agreement serves as an arbitration agreement between the petitioner and respondent i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

5. It is submitted that primary agreement is inter alia for warehousing, storing, onward transmission, billing and collection of pharmaceutical and other products, etc., which ran into rough weather and it was terminated by the petitioner on 23.05.2021. Thereafter inter alia saying that some of the goods have shelf life the petitioner moved this Court in and by O.A.No.569 of 2021 under Section 9 of A and C Act and interim order was granted on 20.09.2021.



7. In the light of the narrative thus far, issue notice to respondent returnable in three weeks i.e., returnable by 05.04.2022. Private notice permitted. Private notice through all electronic modes of communications (subject to proof being demonstrated) also permitted.

3. Thereafter, on 05.04.2022, following proceedings were made:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 15.03.2022.

2. Today, Mr.Mohammed Fayaz Ali, learned counsel who is before this Court submits that the notice has been returned unserved.

3. *It is submitted that the petitioner may have to resort to substituted means of service. Let this matter be listed before learned Master on 08.04.2022. Learned counsel for petitioner to take steps to effect service through substituted modes of service. Learned Master to post the matter before Court after service is effected on the sole respondent.'*

4. Pursuant to 05.04.2022 proceedings, the matter was listed before



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learned Master and learned Master has posted the matter before this Court

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after ensuring that service is effected through substituted mode. Order of

learned Master dated 06.06.2022 reads as follows:

oblique
It is. This matter is listed before
this court for effecting service through
substituted mode. But the court notice
has been already served on sole
trustee, on 01.04.2022. Since service
has been completed on the sole trustee,
it is directed to list the matter
before learned Judge's court. The
oblique

5. Today, Mr.Mohammed Fayaz Ali, learned counsel for petitioner is



before this Court. Learned counsel adverting to the aforementioned 15.03.2022 proceedings submits that he reiterates the same and rests his case there with a request for appointment of a sole Arbitrator.

6. This Court now proceeds to dispose of the captioned Arb.OP on merits and before doing that, it is deemed appropriate to set out three points and they are as follows:

(i) Sub-section (13) of Section 11 of A and C Act reads as follows:

'(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed by the Supreme Court or the High Court or the person or institution designated by such Court, as the case may be, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. '

(underlining made by this Court for ease of reference and for highlighting/supplying emphasis)

To be noted, there is an amendment to aforementioned sub-section (13) in and by Section 3(ix) of Act 33 of 2019 which is an Amending Act and which goes by the caption 'Arbitration and Conciliation (Amendment) Act, 2019'. By this proposed amendment, sixty days is to become 30 days for



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disposal by arbitral institutions but this amendment has not kicked in as Section 3 of Amending Act 33 of 2019 has not been notified though some other Sections of the amending Act were notified on 30.08.2019.

Be that as it may, suffice to say that this Court has to make every endeavour to dispose of Section 11 petition within sixty days from the date of service of notice on the opposite party. It is in this view of the matter that captioned Arb.OP is being disposed of on merits;

(b) The need to dispose of Section 11 petitions as expeditiously as possible has been emphasised by Hon'ble Supreme Court in a recent order dated 19th May 2022 made in **Shree Vishnu Constructions [Shree Vishnu Constructions Vs. The Engineer in Chief Military Engineering Service & Ors.]** wherein Hon'ble Supreme Court has observed as follows:

'The litigant may lose the faith in the justice delivery system, which may ultimately affect not only rule of law but commerce and business in the country. Therefore, the applications under Sections 11(5) and



11(6) of the Arbitration Act and other applications, either for substitution and / or change of the Arbitrator have to be decided and disposed of at the earliest. '

(c) Scope of a legal drill under Section 11 should perambulate within the statutory perimeter sketched by sub-section (6A) of Section 11 which in other words means that in a Section 11 legal drill this Court will examine the existence of arbitration agreement. In the case on hand, the respondents even after being duly served by a process known to law has not chosen to come before this Court and dispute the existence of arbitration agreement. To be noted, sub-section (6A) of Section 11 reads as follows:

'(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.'



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Aforementioned sub-section (6A) came up for consideration before Hon'ble Supreme Court in **Mayavati Trading** case law [**Mayavati Trading Private Limited Vs. Pradyut Deb Burman** reported in (2019) 8 SCC 714]. Relevant paragraph in **Mayavati Trading** case law is paragraph 10 and the same reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.'

(underlining made by this Court

to supply emphasis and highlight)

Paragraph 10 of **Mayavati Trading** case law takes this Court to **Duro Felguera** case law [**Duro Felguera, S.A. versus**



Gangavaram Port Limited reported in **(2017) 9 SCC 729**].

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Relevant paragraph in **Duro Felguera** case law are paragraphs

47 and 59 and the same read as follows:

'47. What is the effects of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the 2015 Amendment') with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.'

*'59. The scope of the power under [Section 11](#) (6) of the 1996 Act was considerably wide in view of the decisions in *SBP and Co.* (supra) and *Boghara Polyfab* (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in [Section 11](#) (6A) ought to be respected. '*



7. Learned counsel adverting to the arbitration agreement i.e., clause

46 of primary agreement submits that it would be desirable to have the Arbitral Tribunal constituted by a sole arbitrator as there is no impediment to do so if parties agree and in the case on hand respondent has not come forward to disagree with this request in spite of being duly served leading to inevitable inference of implied consent.

8. Be that as it may, this Court having set out the three points of relevance, now proceeds to dispose of the captioned matter by appointing a sole Arbitrator. Hon'ble Mr. Justice V.Bharathidasan (Retd.), Former Judge of this Court, residing at No.42 (NB) Greenways Road, Chennai - 600 028, Mob: 94443 83139 and 94455 00224, E-mail: dasanvb@gmail.com is appointed as sole Arbitrator. Hon'ble sole Arbitrator is requested to enter upon reference, adjudicate the arbitrable disputes that have arisen qua agreement dated 03.06.2020 captioned 'AGREEMENT FOR APPOINTMENT OF SUPER DISTRIBUTOR', which has been referred to as 'primary agreement' in 15.03.2022 proceedings. Hon'ble Arbitrator is requested to hold sittings in the 'Madras High Court Arbitration and



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Conciliation Centre under the aegis of this Court' (MHCAC) and render an award as per Madras High Court Arbitration Proceedings Rules 2017 and fee of the Hon'ble Arbitrator shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

9. Captioned Arb.OP disposed of in the aforesaid manner. There shall be no order as to costs.

08.06.2022

gpa

Index: Yes/no

Internet: Yes

Note: Registry to communicate this order forthwith to:

1. Hon'ble Justice V.Bharathidasan (Retd.,)
No.42 (NB) Greenways Road
Chennai - 600 028
Mob: 94443 83139 and 94455 00224
E-mail: dasanvb@gmail.com
2. The Director
Tamil Nadu Mediation and Conciliation Centre
-cum-
Ex Officio Member,
Madras High Court Arbitration Centre
Madras High Court, Chennai – 600 104.



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M.SUNDAR.J.,

gpa

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