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Arb.O.P.(Com.Div).No.277 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.277 of 2021

M/s.Biotan Pharma
rep by its Proprietor
Mr.V.Arul Pravin
No.951/3, Crystal Lawns
13th Main Road, Anna Nagar West,
Chennai – 600 040.

... Petitioner

Vs.

1.M/s.VG Natural Extracts,
2.Manisekaran,
3.M.Vignesh Raj,

Nos.1 to 3 are having office at
693/1-A, RRGF Complex,
Thottipalayam Village,
Aneripalayam Post,
Tiruppur – 641 603.

... Respondents

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to

- (i) appoint a sole arbitrator to adjudicate upon the disputes between the petitioner and respondents arising out of the sales contract dated 02.11.2016;
- (ii) direct the respondent to pay the cost.



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For Petitioner : Mr.R.Ezhilarasan

For Respondents : Mr.R.Nasrine

ORDER

This petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1956, seeking to appoint a sole arbitrator to adjudicate upon the disputes between the petitioner and respondents arising out of the sale contract dated 02.11.2016.

2.The case of the petitioner is that his firm procure various agriculture products from local farmers and import certain herbs from overseas, which has got high medicinal value, for the past 8 years. During the course of business the petitioner entered into a sale contract on 02.11.2016.

3.The grievance of the petitioner is that in terms of said sale contract dated 02.11.2016, the petitioner supplied the goods to the respondents on 03.11.2016 and the respondents paid a sum of Rs.14,06,496/- by way of RTGS on 03.02.2017 and assured that balance amount of Rs.15,13,824/- will be paid within twenty days. But, till date, the respondents have not paid the balance amount.



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4.Learned counsel appearing for the petitioner would submit that the present dispute squarely falls under the preview of the sale contract. Therefore, in terms of Clause No.12 of the sale contract, the present dispute is arbitrable and hence, the present application is filed.

5.Learned counsel appearing for the respondents strongly opposed the submission made by the petitioner's counsel that the present dispute is arbitrable in terms of Clause 12 of the sale contract.

6.For better appreciation, Clause 12 of the sale contract is reproduced hereunder:

“12.Arbitration:

All disputes shall be settled through friendly negotiation. In case no settlement the case then all disputes subject to Chennai jurisdiction”

7.By referring the above Clause, the learned counsel appearing for the respondents would submit that the only word 'Arbitration' has been shown as heading of the Clause 12 in the sale contract. But, under the said clause, it is stated that all the disputes can be decided only by friendly negotiation and if no



settlement arrived by way of friendly negotiation, it can only be settled through Court and not by Arbitrator.

8. Heard the learned counsel appearing for the petitioner as well as the respondents and perused the materials available on record.

9. Upon hearing and perusal of Clause 12 of the sale contract, it is clear that if there is dispute between the petitioner and the respondents, it can be sought out only by way of friendly negotiation and in case no settlement arrived, all the dispute subject to the Chennai jurisdiction. Merely using the word 'Arbitration' as heading of the clause cannot be construed as the dispute is arbitrable.

10. The Hon'ble Supreme Court in the case of ***Mahanadi Coalfields Ltd., & Anr Vs. M/s. IVRCL AMR Joint Venture***, has held as follows:

“The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and a willingness to be bound by the decision of such Tribunal on such disputes, it is arbitration



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agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplated the possibility of going for arbitration.”

11.A reading of the Clause 12 of the sale contract would clearly shows that the parties does not express any intention to refer their dispute for Arbitration, instead they only agreed to settled the matter by way of friendly negotiation. Thus, merely the heading in Clause 12 alone is not suffice without expressing any intention to go for arbitration. In the present case, nothing has been disclosed in Clause 12 of the sale contract for determination of disputes and obligation of the petitioner to go for arbitration. Therefore, the present dispute does not falls under the scope of Arbitration. Hence, this petition is liable to be dismissed.

12. In the result, the petition is dismissed. No costs.

08.12.2022

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KRISHNAN RAMASAMY. J.,



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