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

% Judgment delivered on: 26th April, 2022

+ ARB.P. 88/2022

NATIONAL RESEARCH DEVELOPMENT
CORPORATION & ANR.

..... Petitioners

versus

M/S SMS PHARMACEUTICALS LTD

..... Respondent

Advocates who appeared in this case:

For the Petitioners:

Mr. Ramashanker, Mr. Shivam and Mr. Rohtash
Mehta, Advocates

For the Respondent:

Mr. Manmeet Arora and Mr. Keshav Sehgal,
Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

I.A.6378/2022 (condonation of delay)

For the reasons stated in the application the delay in filing is
condoned.

Application is disposed of.

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1. Petitioner seeks appointment of an Arbitral Tribunal pursuant to

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agreement dated 26.03.2004.

2. Learned counsel appearing for the respondent submits that the claim is barred by limitation and further that there is no cause of action in favour of the petitioner as under the agreement, the respondent was to commence commercial production or in the alternative both the parties were to find a third party to assign the technology.

3. Learned counsel submits that the respondent is willing to even participate in the transfer of technology to a third entity and in that eventuality, there will be no liability of the respondent.

4. This is disputed by learned counsel for the petitioner who further submits that as per the agreement, the term was 14 years which ended on 25.03.2018 and from the said period keeping in view the orders of the Supreme Court, the petition is within limitation.

5. I am of the view that the dispute with regard to lack of cause of action as also limitation are disputes which are amenable to the jurisdiction of Arbitral Tribunal, specially in view of the fact that this Court does not find that the objections with regard to the limitation is ex-facie made out from the records of the case. In the facts and circumstances of the case, the questions raised are mixed questions of fact and law, which would be required to be gone into by the Arbitral



Tribunal, if such an objection is raised before the Tribunal.

6. In view of the above, learned counsel for the parties pray that without prejudice to their rights and contentions, the disputes be referred to Delhi International Arbitration Centre.

7. The disputes are referred to the Delhi International Arbitration Centre (DIAC), which would appoint an arbitrator to arbitrate the disputes. The arbitration shall take place under the aegis of the DIAC in accordance with its rules and regulations.

8. Arbitrator would be entitled to charge fees in accordance with the schedule of fee stipulated by the DIAC.

9. The arbitrator shall furnish the requisite disclosure under section 12 of the Arbitration and Conciliation Act, 1996 within two weeks of entering reference.

10. The petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

APRIL 26, 2022

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