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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 144 OF 2022

Venkateshwara B. V. Biocorp Pvt. Ltd.
Through its Mr. Sudhir Patil

...Petitioner

Versus

Mr. Dheeraj Saraswat
Proprietor of M/s.janta Medical Store

...Respondent

* * *

- Ms. Swatantri Waghmare, for the Petitioner
- Mr. Sharad Bansal, Mr. Deepak Shukla i/by B.N. Shukla & Co., for Respondent.

* * *

CORAM : MANISH PITALE, J

DATE : 07th JANUARY, 2023.

P. C. :

1. Heard learned Counsel for the parties. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator in the context of an Arbitration Clause contained in the Super Distributor Agreement executed between the parties. Clause 32 of the Agreement provides for resolution of disputes by Arbitration. The same reads as follows :

“32. Any disputes arising out of this agreement shall be settled by arbitration by and under the rules of arbitration under The Arbitration and Conciliation Act, 1996. All proceedings in such arbitration shall be in Pune. Courts in Pune shall alone have jurisdiction in matters involving any dispute pertaining to this agreement.”

2. It appears that disputes arose between the parties whereby the Petitioner claimed certain amount due from the Respondent. In that context on 20th November, 2021, the Petitioner issued notice to the Respondent invoking the Arbitration Clause and proposing the name of the sole Arbitrator for resolution of disputes. There was no response from the Respondent, despite service of the said notice.

3. In this backdrop the present petition was filed, wherein the Respondent entered appearance through Counsel. The learned Counsel appearing for the Petitioner submitted that since disputes had arisen between the parties and the Super Distributor Agreement consisted of an Arbitration Clause, which was duly invoked, this Court may allow the present petition.

4. The learned Counsel appearing for the Respondent submitted that in the present case the matter could not be referred to the Arbitration, for the reason that part of the disputes sought to be raised on behalf of the Petitioner were not related to the aforesaid agreement and this was clear from the stand taken on behalf of the Petitioner in affidavits filed in proceedings initiated under Section 138 of the Negotiable Instrument Act, pertaining to certain cheques issued by the Respondent. It was submitted that since some of the disputes could not be said to be subject matter of the agreement in

question, this Court may not exercise jurisdiction under Section 11 for referring the matter to Arbitration. Reliance was placed on the judgment in the case of *Vidya Drolia Vs. Durga Trading Corporation*.¹

5. This Court has perused the agreement in question, which indeed contains an Arbitration Clause at Clause 32. The invocation of notice dated 20th November, 2021, spells out the disputes that arose between the parties. It is stated in the said notice, as well as in the present petition, that the Petitioner was maintaining a running account as regards the supplies made to the Respondent under the said agreement and the payments due in respect of the same. Specific amounts said to be outstanding have been referred to and the Petitioner has invoked the Arbitration Clause in that context.

6. This Court is of the opinion that while exercising jurisdiction under Section 11 of the aforesaid Act, which is akin to exercising jurisdiction by the Court under Section 8 thereof, as per the law laid down by the Hon'ble Supreme Court in the case of *Vidya Drolia Vs. Durga Trading Corporation* (supra), the contentions sought to be raised on behalf of the Respondent by relying upon certain statements made in proceedings initiated under Section 138 of the Negotiable Instrument Act, cannot be of relevance. This Court is convinced that there is indeed an Arbitration agreement between the

¹ 2021 2 SCC 1.

parties, disputes have arisen between them and the Petitioner had validly invoked the Arbitration Clause. As to whether the disputes would be arbitral or not ought to be left to the learned Arbitrator, for the reason that the Respondent has failed to make out an exceptional case for this Court to examine the said aspect of the matter, while considering the petition filed under Section 11 of the said Act.

7. In view of the above, this Court is of the opinion that sufficient grounds are made out for exercising jurisdiction under Section 11(6) of the said Act as Arbitrator could not be appointed under the procedure agreed between the parties.

8. In view of the above, the petition is allowed.

9. Considering the nature of claims raised on behalf of the Petitioner, it would be appropriate that a retired District Judge is appointed as the Arbitrator. Since the Arbitration Clause specifies Pune as the place of Arbitration, Mr. S. M. Deshmukh, a retired District Judge is appointed as the sole Arbitrator.

10. The details of the learned Arbitrator are as follows :

Mr. S. M. Deshmukh,
Block No. 13/14, Building No. "O" Kumar Park-off,
Kondhwa Road, Bibwewadi, Pune - 411 037.
Phone No. 20 - 24216979

11. The learned Counsel for the parties undertake to inform the learned Arbitrator about the order passed today.
12. The learned Arbitrator is requested to communicate his consent and Disclosure Statement as per Section 11(8) r/w Section 12(1) of the said Act, within four weeks to the Registrar (Judicial) of this Court.
13. The fees of the learned Arbitrator shall be as per Schedule IV to the Aforesaid Act.
14. All questions are kept open.
15. The petition stands disposed of.

(MANISH PITALE, J.)