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Arb.O.P.(Com. Div.) No.187 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.187 of 2023

Medispan Private Limited,
No.4, Desika Road,
6th Floor, Mookambika Complex,
Mylapore, Chennai - 600 004.

... Petitioner

Vs.

Shrimed Lifesciences Private Limited,
Roland Tower, the Mall,
Kanpur - 208 001.

... Respondent

PRAYER: Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate over the dispute arising out of the Brand License Agreement dated 11.05.2016 between the petitioner and the respondent.

For Petitioner : Ms.Shruthi Srinivasan
for
Mr.Arun C.Mohan

For Respondent : No Appearance

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator.



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2. There seems to be a dispute between the petitioner and the respondent under a brand license agreement dated 11.05.2016, which was entered into at Chennai. The brand license agreement dated 11.05.2016 contains an arbitration clause, which is extracted hereunder:

"Clause 7 (a): This Agreement shall be governed by and construed in accordance with the laws in India and the Courts at Chennai shall have exclusive jurisdiction over this Agreement. Any Party ("Claimant") which claims that a dispute has arisen out of or in connection with the existence, validity, interpretation or implementation of or breach by a party of this agreement shall give a written notice ("Dispute Notice") to the other party as soon as reasonably practicable after the claimant has become aware of the occurrence of the event, matter or thing which has become the subject matter of the dispute.

7 (b): The dispute notice shall specify the particulars of the circumstances and nature of such dispute and of the Claimant's claim in relation thereto



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to resolve such dispute through conciliation. If within 30 days from the date of issuance of dispute notice and in the event the dispute is not resolved through conciliation, the dispute shall be resolved through arbitration conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996 as amended / re-enacted and in force from time to time, by a sole arbitrator to be jointly appointed by the parties. The language of arbitration shall be English and the venue of arbitration shall be Chennai."

3. The petitioner has filed copies of notices sent by them to the respondent for the alleged breach of contract committed by the respondent. The petitioner claims that none of the notices were responded. The petitioner has also sent a notice dated 13.12.2022 to the respondent initiating arbitration and seeking for the consent of the respondent for the appointment of Honourable Justice N.Kirubakaran (Retd.), Former Judge of this Court, as a sole arbitrator to decide the dispute between the parties. Since the respondent has not sent any reply, the petitioner has filed this



application under Section 11 of the Arbitration and Conciliation Act, 1996,
seeking for appointment of an arbitrator.

4. Admittedly, there is an arbitration agreement in the brand license agreement dated 11.05.2016 entered into between the parties, which is the subject matter of the dispute. The petitioner has also sent notices to the respondent, pointing out the alleged breach of contract committed by the respondent under the brand license agreement dated 11.05.2016.

5. Admittedly, there has been no response from the respondent for the notices sent by the petitioner which includes the notice by which the petitioner has initiated arbitration, in accordance with Section 21 of the Arbitration and Conciliation Act, 1996. When there is a valid arbitration agreement, necessarily this Court will have to appoint an arbitrator. The respondent has been duly served in this application and their name is also printed in the cause list today.

6. For the foregoing reasons, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:



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(a) This Court appoints Honourable Mr.Justice N.Kirubakaran (Retd.), a former Judge of this Court having office at No.36, 2nd cross street, Rayala Nagar, Ramapuram, Chennai - 600 089 as a sole Arbitrator to decide the dispute between the petitioner and the respondent arising out of the brand license agreement dated 11.05.2016.

(b) The Arbitrator shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996.

(c) Both the parties shall equally share the arbitrator's fees.

(d) The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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ABDUL QUDDHOSE. J.,

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