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

% *Date of Decision: 3rd August, 2023*

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+ **ARB.P. 656/2023**

GREENCROSS EXPORT PVT. LTD. Petitioner

Through: Mr. Purvish Jitendra Malkan,
Ms. Dharita Purvish Malkan and
Mr. Deepak Mani Tripathi, Advocates.

versus

INNOVARE LABS PVT. LTD Respondent

Through: Mr. Jude James and Mr. Nishad
L.S., Advocates.

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+ **O.M.P.(I) (COMM.) 220/2023**

GREENCROSS EXPORT PVT. LTD. Petitioner

Through: Mr. Purvish Jitendra Malkan,
Ms. Dharita Purvish Malkan and
Mr. Deepak Mani Tripathi, Advocates.

versus

INNOVARE LABS PVT. LTD Respondent

Through: Mr. Jude James and Mr. Nishad
L.S., Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

ARB.P. 656/2023 and I.A. 12176/2023

1. This petition has been filed by Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as



the '1996 Act') for appointment of a sole Arbitrator for adjudication of disputes between the parties.

2. Petitioner and Respondent entered into an Exclusive Representation Agreement on 03.01.2020 whereby Respondent appointed the Petitioner Company as its exclusive representative for the entire territory of the Republic of Russia to assist and help the Respondent in marketing and conducting business in Russia, Belarus, Uzbekistan, Kazakhstan and Ukraine for bulk drug products manufactured by the Respondent. According to the Petitioner, he procured two orders for the Respondent in the first year itself followed by another order in the second year, however, Respondent all of a sudden vide letter dated 16.02.2022 intimated that it had terminated the contract and would enter into a new Agreement on revised terms, if the need so arose.

3. Correspondence was exchanged between the parties wherein the Petitioner ventilated its grievances that the contract was illegally terminated on account of which it had suffered a huge loss. Not getting any positive response from the Respondent, Petitioner sent a notice dated 04.02.2023 to the Respondent demanding the outstanding amount due on account of the loss suffered and invoking the arbitration clause incorporated in the contract seeking appointment of a sole Arbitrator. Respondent replied to the notice denying the liability to pay any amount to the Petitioner. This constrained the Petitioner to file the present petition.

4. Issue notice.

5. Mr. Jude James, learned counsel accepts notice on behalf of Respondent and submits, on instructions, that Respondent has no



objection to appointment of a sole Arbitrator provided the arbitration proceedings are conducted under the aegis of Delhi International Arbitration Centre ('DIAC').

6. I have heard the learned counsels for the parties and examined the arbitration clause in the Agreement dated 03.01.2020, which reads as follows:-

"ARTICLE 7- GOVERNING LAW AND SUBMISSION TO JURISDICTION

A. This agreement is governed in accordance with Indian laws.

B. All disputes arising out of related to the agreement shall be settled through friendly consultation between both the parties. In case no agreement can be reached through consultation, they shall be submitted to arbitration.

C. In case the Parties cannot come to any amicable agreement, any dispute or difference what so ever arising between the parties out of or related to the construction meaning, scope, operation, claims or the effect of this Agreement or the validity or the breach shall be finally settled by arbitration in accordance with the institutional rules framed by the Indian Chamber of Commerce and observing the content of this clause. The arbitration proceedings shall take place in New Delhi and shall be conducted in English language."

7. In view of the arbitration agreement existing between the parties and with their consent, this Court appoints a sole Arbitrator to adjudicate the disputes between the parties. Accordingly, following directions are issued:-

(a) Mr. Justice Swatanter Kumar, Former Judge, Supreme Court of India, (Mob. No. 9560413636) is appointed as a sole Arbitrator to adjudicate the disputes between the parties pertaining to and in respect of the agreement dated 03.01.2020. The arbitration proceedings shall be conducted under the aegis of DIAC;



(b) Learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the 1996 Act prior to entering upon reference; and

(c) Fees of the learned Arbitrator shall be regulated in terms of the Fourth Schedule of the 1996 Act.

8. Needless to state that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the parties are left open to be decided by the learned Arbitrator, in accordance with law.

9. Petition stands disposed of alongwith the pending application in the aforesaid terms.

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10. This petition has been filed by the Petitioner under Section 9 of the 1996 Act seeking the following prayers:

“A. Restrain the Respondent its officer bearers, employees, assignees, or any other person acting on behalf of the Respondent from marketing and/or doing business in the territory of the Republic of Russia, Belarus, Uzbekistan, Kazakhstan, and Ukraine for the bulk drug products of the respondents where the Petitioner under the contract dated 03.01.2020 has been appointed as its Exclusive Representative.

B. Restrain the Respondent its office bearers, employees, Assignees, or any other person acting on behalf of the Respondent from bypassing the petitioner and directly communicating to the entities (companies/ concerns which are involved in bulk drug products business in any manner whatsoever) in the territory of Republic of Russia, Belarus, Uzbekistan, Kazakhstan, and Ukraine.

C. The respondents be directed to furnish the account of business undertaken directly or indirectly in the territory of Republic of Russia, Belarus, Uzbekistan, Kazakhstan, and Ukraine through office bearers, employees, Assignees, or any other person acting on behalf of the Respondent in the after 03.01.2020 the date of the contract by which the petitioner is appointed as exclusive representative of the respondents for the bulk drug products of the respondents.”



11. Issue notice.

12. Mr. Jude James, learned counsel accepts notice on behalf of Respondent.

13. After canvassing some arguments, learned counsel for the Petitioner, on instructions, submits that since the Arbitral Tribunal has been constituted, he may be given the liberty to withdraw the present petition to take appropriate steps for seeking the interim relief before the learned Arbitrator under Section 17 of the 1996 Act.

14. In view of the aforesaid, Petitioner is permitted to withdraw this petition with liberty to approach the Arbitral Tribunal for seeking interim relief in accordance with law and if so advised. It is made clear that this Court has not expressed any opinion on the merits of the disputes between the parties and all rights and contentions are left open.

15. Petition stands disposed of as withdrawn alongwith the pending application.

JYOTI SINGH, J

AUGUST 03, 2023/ck/shivam