

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 149 OF 2024

Tapaswi Warehousing Corporation Through Swati ...Petitioner
Kedarsingh Tapaswi

Versus

Hindustan Antibiotics Limited Through Mr Milind ...Respondent
Pahade, Deputy Manager

Mr Kuldeep Nikam, with Prasad Avad, for the Petitioner.

CORAM. ARIF S. DOCTOR, J
DATED. 14th November 2024

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PC:-

1. Mr Nikam, Learned Counsel for the Petitioner submitted that the Respondents have been served. He seeks leave to file the Affidavit of Service in the Registry. Leave granted as prayed for.

2. The present Arbitration Petition filed under Section 11 of the Arbitration and Conciliation Act 1996 seeks appointment of an Arbitrator in respect of the disputes and differences arisen between the parties out of a Memorandum of Understanding ("**MoU**")/Leave and License Agreement dated 21st October 2022 entered into between the Petitioner and the Respondent. It contains Arbitration Clause "U", which provides that the Managing Director of the Respondent-Company to act as the Sole Arbitrator.

3. Mr Nikam, however, submits that the Respondent has invoked Arbitration. He submits that when an objection was taken before the Sole “Arbitrator”, the “Arbitrator” rejected the same vide minutes of the meeting dated 29th August 2024 by recording the following.

“... .. The Arbitrator informed the Complainant Company that he has ”gone through the letter dt. 28.05.2024 and 10.07.2024 regarding objection to the appointment of Arbitrator. However Upon review, I have found no merit in the objection raised by the Complainant Company, i.e., M/s. Tapaswi Warehousing Corporation concerning my appointment as Arbitrator. Consequently, I will proceed with the Arbitration. Both the parties are hereby directed to take the necessary steps and continue with the arbitration proceedings as per the schedule. Following persons were present before the undersigned Arbitrator. “

4. Mr Nikam submits that given the well settled position in law such arbitration shall be non-est and void. The Respondents have been served. It is to my extreme surprise that, what has been stated in by the sole “Arbitrator” is clearly belies the Arbitrator’s ***ignorance of the well settled*** position in Law.

5. Be that as it may, Respondents are today not appeared.

6. List the matter on 25th November 2024.

7. Learned Counsel for the Petitioner to file an Affidavit of Service proving service on the Respondent.

8. It is made clear that if the Court finds that the Respondents have been served, the Court shall proceed to hear and dispose of the Petition on the next date.

9. Mr Nikam undertakes to give the Respondents notice of the next date of hearing.

(ARIF S. DOCTOR, J)

Note. This order is modified as per order dated 25th November 2024.