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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 171/2023

DR LAL PATHLABS LIMITED

..... Petitioner

Through: Mr. Sukrit R. Kapoor and Mr. Vijay
Shankar, Advocates.

versus

CONNEXMINDS PRIVATE LIMITED

..... Respondent

Through: Mr. Rajnish Ranjan, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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21.02.2024

ARB.P. 171/2023 & I.A. 12092/2023

By way of the present petition under section 11 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks reference of the disputes that are stated to have arisen with the respondent from Memorandum of Understanding dated 31.03.2016 ('MoU') to arbitration.

2. Notice on this petition was issued on 14.02.2023. Though no formal reply has been filed in the matter, the respondent – earlier known as M/s Digital Path Lab Pvt. Ltd. and now called M/s Connexminds Pvt. Ltd. – has filed written arguments dated 22.05.2023; to which the petitioner has filed rejoinder dated 08.02.2024.
3. Mr. Sukrit R. Kapoor, learned counsel for the petitioner has drawn the attention of this court to unnumbered paragraph/clause at page No.4 of the MoU with the heading "*Governing law and dispute resolution*", which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act; with the 'place' of arbitration being at New Delhi.



4. As per the record, the petitioner invoked arbitration *vide* Notice dated 29.11.2022; to which the respondent has sent reply dated 22.12.2022.
5. The only objection taken by the respondent to the prayer made in the present petition is that the claims sought to be referred to arbitration are *ex-facie* time-barred.
6. The court has heard learned counsel appearing for the parties on the issue.
7. The matter turns upon the proper construction and effect of various invoices raised by the petitioner upon the respondent, for services rendered for collection of blood samples.
8. It is noticed that *vide* I.A. No. 12092/2023, the petitioner had sought to place on record the ledger account maintained by them in respect of the respondent, to indicate the payments received by the petitioner against invoices raised upon the respondent. Though no formal notice has been issued on I.A No. 12092/2023, considering the prayer made, Mr. Rajnish Ranjan, learned counsel appearing for the respondent does not object to the application being allowed.
9. Accordingly, the application is allowed; and the documents filed therewith are taken on record.
10. Application stands disposed-of.
11. A perusal of the ledger account filed shows that there is no doubt that the last invoice was raised by the petitioner upon the respondent on 31.01.2018; and the last payment/part-payment was received from the respondent on 31.10.2018.
12. However, Mr. Kapoor argues, that thereafter since by way of a phone-call on 21.05.2021, the respondent denied any liability for payment to



the petitioner, the petitioner had adjusted the security deposit lying with them against the dues owed by the respondent, which happened on 11.10.2021.

13. It is accordingly the submission, that invocation notice dated 29.11.2022 issued to the respondent invoking arbitration was within the 03-year limitation period, when reckoned from the date on which the security deposit was adjusted, *i.e.* 11.10.2021.
14. In the circumstances, it is urged that the claims made are not time-barred, since the petitioner is entitled to the benefit under section 19 of the Limitation Act 1963, by operation of which a fresh period of limitation commences from the date part-payment was made by the respondent against the dues owed.
15. Mr. Ranjan however refutes this submission to say that even if all else is taken to be correct, the last payment *voluntarily made* by the respondent to the petitioner was on 31.10.2018; and therefore, invocation notice dated 29.11.2022 was issued beyond the 03-year period of limitation available to the petitioner. Counsel further argues that *adjustment of security deposit*, made by the petitioner by its own action, does not amount to either acknowledgment of debt or part-payment by the respondent towards the alleged dues claimed by the petitioner.
16. Upon a conspectus of the foregoing, this court is of the view that the question whether or not the adjustment of security deposit made by the petitioner amounts to part-payment by the respondent towards the claims, within the meaning of section 19 of the Limitation Act, is a matter that requires deeper consideration, both on point of fact and of



law. The claims cannot therefore be held to be *ex-facie* time-barred or ‘deadwood’.

17. Based on the averments contained in the petition; the stand taken by the respondent; and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 29.11.2022, do not appear *ex-facie* to be non-arbitrable.
18. Accordingly, the present petition is allowed and **Mr. Tarun Sharma, Advocate (Cellphone No.: +91 9650878550)**, who is present in court, is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties.
19. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
20. The learned Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Arbitrator.
21. Parties shall share the arbitrator’s fee and arbitral costs, equally.
22. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.
23. Though the learned Arbitrator has been apprised of the order, by way of official communication, let a copy of this order be communicated



by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.

24. The petition stands disposed-of in the above terms.
25. Other pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 21, 2024
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