



2024 : DHC : 4494



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 29th May, 2024***

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ARB.P. 337/2024**M/S TRAVEL NEWS SERVICES INDIA PVT LTD. Petitioner****Through: Mr. Varun Shankar, Mr. Aryan
Panwar and Mr. Anand Bhushan,
Advs. (M:8920482851)****versus****M/S BIPHA DRUG LABORATORIES PVT LTD. Respondent****Through: Mr. Koshy John. Mr. Prateek Khanna
& Mr. Linoy Varghese, Advs. (M:
9810418112)****CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter*, '1996 Act') has been filed by the Petitioner- M/s. Travel News Services India Pvt. Ltd., seeking appointment of an arbitrator in terms of Clause 14.2 of the Sub-License Agreement (*hereinafter* 'the Agreement') dated 28th September, 2017. The said Agreement was entered in respect of a store located at the Domestic Security Hold Area of Netaji Subhash Chandra Bose International Airport, Kolkata (*hereinafter*, 'demised premises'). Clause 14.2 of the Sub-License Agreement reads as follows:

"14.2. If any dispute or difference arise between the parties in relation to or in connection with this



agreement, the same shall be resolved through mutual discussions / understanding however, if the parties are unable to resolve the same through mutual dialogues/ discussions the same shall be referred to the Sole Arbitrator for arbitration in accordance with and subject to the Arbitration Act or any statutory modification thereof for the time being in force. The Parties shall mutually appoint the Sole Arbitrator. The Award of the Sole Arbitrator shall be binding on both the parties to this agreement. The arbitration proceedings shall be held at Delhi.”

3. Further, as per Clause 3, the Agreement was entered into for a term of three years, extendable by another two years with mutual consent, unless terminated earlier by the parties.
4. It is the case of the Petitioner that the Respondent has not paid the outstanding dues amounting to Rs. 45,17,509/-, including interest in terms of the Agreement. As per the petition, it is averred that nine reminders were sent to the Respondent regarding outstanding dues, during the years 2019 and 2020. On 22nd March, 2021, notice of termination was issued, the same was also not adhered to. Thereafter, on 17th January, 2022 a legal notice was sent and subsequently on 11th January, 2024, notice invoking arbitration was served upon the Respondent. It is stated that both the legal notice and the notice invoking arbitration were not replied to by the Respondent.
5. Vide order dated 11th March 2024, notice was issued to the Respondent. On 7th May, 2024, Id. Counsel for the Respondent entered appearance and submitted that he wished to file a reply to the present petition. It is clear that the Respondent has not replied to any of the notices sent by the Petitioner. Matter was adjourned on the last date i.e., 7th May, 2024, to enable the parties to arrive at a settlement.



6. Today, Id. Counsel for the Respondent-Mr. Koshy John raised three issues:

- The first issue is that some part of the claim post the initial term of the Agreement is not arbitrable as there was no written renewal between the parties as required under the Agreement. The mandatory procedure as prescribed in Clauses 15.2 and 15.3 of the said Agreement was not followed.
- Secondly, some of the claims raised by the Petitioner are beyond limitation. As per the Petitioner, the Agreement expired on 27th September, 2020, and without explicit communication or agreement for extension, it could not extend to August 2021. Thus, the three-year limitation period to raise any claim lapsed on 26th September, 2023, considering the dispute began on 27th September, 2020. The Petitioner sought the appointment of an arbitrator only on 11th January, 2024, 106 days past the limitation period.
- Thirdly, during the COVID-19 pandemic, certain counter offers were made by the Respondent which were not responded to by the Petitioner.

7. In response thereof, Id. Counsel for the Petitioner submits that the demised premises was kept open even during the COVID period between 13th October, 2020 and 14th October, 2021, however, no payments were made by the Respondent. He, further, submits that the benefits under the circulars passed by the Airport Authority of India ('AAI') for the COVID-19 pandemic were also extended to the Respondent, and thus, no further concessions are liable to be granted. This position is disputed by the Respondent.



8. In addition, it is submitted by the Petitioner that the handover/takeover of the demised premises admittedly took place only on 29th December 2021. Therefore, for the entire period from January 2020 to December 2021, the Respondent is liable to make the payment of the occupation charges. This position is disputed by the Respondent, who submits that since the store/demised premises remained closed for most of the period as passes were not issued by the Petitioner, the Respondent is not liable to pay any charges. This is again disputed by the Petitioner, who submits that the products of the Respondent continued to remain in the shop.

9. Heard. The law with respect to the power of the referral court under Section 11 of the 1996 Act is settled. The Supreme Court in *NTPC v. M/s. SPML Infra (2023 LiveLaw (SC) 287)* has held that the referral court under Section 11(6) of the 1996 Act has to undertake a two-step inquiry while referring the parties to arbitration - the first, is about the existence and the validity of an arbitration agreement, and the second is about the non-arbitrability of the dispute between the parties.

10. Considering the overall conspectus of the facts, there are arbitrable disputes between the parties. Clearly, there are disputes in relation to the sums payable by the Respondent to the Petitioner, in respect of the occupation charges. Accordingly, leaving upon the contentions raised by the Respondent to be adjudicated by the Id. Sole Arbitrator, this Court is of the opinion that the disputes deserve to be referred to arbitration.

11. Accordingly, **Mr. Gunjan Sinha Jain, Advocate (M: 9811387311)**, who is present in Court, is appointed as the Sole Arbitrator.

12. The Arbitration proceedings shall take place under the aegis of the Delhi International Arbitration Centre (hereinafter, '*DIAC*'). The arbitration



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proceedings shall be conducted under the Rules of DIAC. The fee of the ld. Sole Arbitrator shall be as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996, as amended by the DIAC Rules.

13. List before the DIAC on 8th July, 2024. Let a copy of the present order be emailed to the Coordinator, DIAC on the email id-delhiarbitrationcentre@gmail.com. All contentions of the parties are left open.

14. Petition is disposed of with all pending applications, if any.

PRATHIBA M. SINGH
JUDGE

MAY 29, 2024
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