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

+ **ARB.P. 363/2024**

HOYA MEDICAL INDIA PVT. LTD

.....Petitioner

Through: Mr Rakesh Lakra and Mr Bhavya
Sharma, Advs.

versus

RAYS INC THROUGH ITS PARTNER & ORS.Respondents

Through: Mr Rahul Sharma, Adv. (through VC)

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

30.07.2024

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1. This is a petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.
2. The facts are that the petitioner entered into a Distributorship Agreement dated 01.04.2020 with the respondents within the territory of Gujarat. The respondent No.1 is a partnership firm and respondent Nos. 2 and 3 are the partners.
3. Pursuant to the Distributorship Agreement, the petitioner supplied goods and products to respondent No.1 based upon the Purchase Order raised by the respondent from time to time.
4. Despite receipt of the products, the respondent failed to clear the payment within the time. Hence, the petitioner invoked Article 14 of the Distribution Agreement seeking appointment of an Arbitrator. The notice invoking arbitration is dated 23.11.2023.



5. Mr Sharma, learned counsel appears for the respondents and states that even though a reply has been filed, the same is not on record and is under objections.

6. Mr Lakra, learned counsel for the petitioner has handed over a copy of the reply filed by the respondent and the same is taken on record.

7. Mr Sharma's only objection is that the present petition is pre-mature. He states that in terms of Article 14.1 (b.), the petitioner was required to serve notice which has not been so done. Article 14.1 (b.) reads as under:

“Article 14. GOVERNING LAW AND DISPUTE RESOLUTION.

14.1 This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the Republic of India, without reference to conflict of laws principles and shall be subject to the jurisdiction of courts in Delhi. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

- a. In the event of any dispute or difference arising between the Parties in connection with this Agreement, representatives shall, within thirty (30) days of a written request from either Party to the other, meet in good faith effort to resolve the dispute without recourse to legal proceedings. Failure to comply with this clause shall be deemed to be a breach of this Agreement.*
- b. If the dispute or difference is not resolved as a result of such a meeting, either Party may at such meeting or within thirty (30) days from its conclusion propose to the other in writing that such a dispute or difference shall be referred to and finally resolved by arbitration in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996 and the rules framed thereunder (the “Arbitration Act”) for the time being in force which rules shall be deemed to be incorporated by*



reference into this clause. The arbitration shall be conducted in English in New Delhi, India.

c. Notwithstanding anything to the contrary, either Party may apply to any court of competent Jurisdiction for interim injunctive relief with respect to irreparable harm which cannot be avoided and/or compensated by such arbitration proceedings, without breach of the provisions of this Article 14, and without any abridgment of the powers of the arbitrators.”

8. Mr Sharma, states that a perusal of Clause (b) of Article 14.1 shows that in case the dispute or difference is not resolved, the party will again serve a notice and thereupon the matter can be referred to arbitration.

9. The petitioner in the present case served a Legal Notice on 23.11.2023 raising the disputes between the parties. The operative portion reads as under:

“8. Our Client has made several attempts requesting you the Noticees to amicably settle the disputes regarding the non-payment of the pending dues without any success. In view of the foregoing, our Client is constrained to take recourse to the Dispute Resolution mechanism under Clause 14 of the said Agreement, for adjudication of the said dispute(s). The clause pertaining to “Dispute Resolution” as mentioned under Clause 14 of the said Agreement is reproduced herein below for ready reference:

XXXXXXXXX

9. We, on behalf of our Client, in compliance with the provisions of the aforementioned Article 14.1 (a), are issuing this Notice for the purposes of exploring an amicable resolution of the disputes. You, the Noticees are requested to meet the authorized representative of our Client at Unit No. 11, 12, 14, 15, 16, 8th Floor, Tower T2, AIPL Business Club, Sector-62, Gurgaon, Haryana-122102 on 15 December 2023 at 2:00 p.m. or any other date, time and venue within 30 (thirty) days from the date of this Notice as mutually agreeable to the Parties to resolve the differences and disputes arising under the



Agreement.

10. In the event of failure of the Parties to arrive at an amicable resolution within a period of 30 days from the date of this Notice, you the Noticees may treat this Notice as a notice invoking arbitration under section 21 of the Arbitration and Conciliation Act, 1996 in accordance with the Agreement.”

10. The notice was duly received by the respondents and the respondents made no efforts to resolve the disputes between the parties. No meeting was convened by the respondent nor did the respondent reply to the said notice. In terms of Article 14.1(a) of the agreement between the parties, it is the conduct of the respondent that amounts to a breach and not the conduct of the petitioner.

11. The intent of Article 14.1 was to try and resolve the matter amicably and for the said purpose a 30 period was to be granted to the parties, failing which, the parties could resort to arbitration.

12. In my view, the petitioner duly complied with the mandate of the arbitration clause between the parties, i.e. Article 14.1 of the Agreement, and issued legal notice seeking resolution of disputes within a period of 30 days. It is only when the respondent made no effort to meet or to resolve the disputes that the petitioner filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996. The respondent failed to comply with Clause 14.1(a) and hence there was no requirement for the petitioner to issue another notice under Section 14.1(b). The notice dated 23.11.2023 duly notified the respondent regarding the intention of the petitioner to resort to arbitration in case the disputes between the parties were not resolved. Therefore, the objection of the respondents that the petitioners have not followed procedure is without merit.



13. For the said reasons, I am satisfied that the rigors of Article 14.1 of the agreement has duly been complied with by the petitioner.

14. The petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

- i) Mr. Justice Vinod Goel (Retd.) (Mob. No. 9910384637) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- v) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

JULY 30, 2024

sr [Click here to check corrigendum, if any](#)