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

+ **ARB.P. 898/2024**

TATA CAPITAL LIMITED

.....Petitioner

Through: Mr. Savyasachi K. Sahai,
Mr. Vishwajeet Singh Shekhawat and Mr.
Aman Singhanian, Advs.

versus

M/S ARYAN PHARMA

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

28.08.2024

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1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, seeking reference of the dispute between the parties to arbitration.

2. The dispute arises in the context of a Term Loan Agreement dated 23 July 2022, executed between the petitioner and the respondent. The Term Loan Agreement envisages resolution of disputes by arbitration. The relevant clause in that regard reads thus:

“12. Arbitration

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility

¹ “the 1996 Act” hereinafter



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Documents, the same shall be settled by arbitration by a sole arbitration to be appointed as per the procedure below and to be held at such place as agreed by the Parties in Serial No. 18 of Annexure 1 hereto of the Agreement. The Party invoking the arbitration (Claimant) shall address a notice to the other Party (Respondent) suggesting the names of not more than three arbitrators, all of whom shall be either retired judges of the District Court, High Court or the Supreme Court or a lawyer having minimum 10 years relevant experience. The Respondent shall either:

- (i) Confirm in writing acceptance of one amongst the proposed names as the sole arbitrator to the Claimant within a period of ten (10) days from the date of notice ("Notice Period");
or
- (ii) Convey objection, if any, in writing to the Claimant, against the proposed names of the sole arbitrator within the said Notice Period.

However, if the Claimant does not receive any response from the Respondent within the said Notice Period, the Claimant shall be entitled to nominate any one person from amongst the proposed three names as the sole arbitrator and such arbitrator shall be deemed to be appointed by both the Parties. In the event, the Respondent conveys its objection as per (ii) above then the sole arbitrator will be appointed by a Court having jurisdiction. The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 together with its amendments, any statutory modifications or re-enactment thereof for the time being in force. The arbitration proceeding shall be conducted in English language. The award of the arbitrator shall be final and binding on all the parties concerned. The cost of arbitration shall be borne by the Obligor."

3. The petitioner addressed a notice to the respondents under Section 21 of the 1996 Act on 24 May 2024, seeking reference of the disputes between the parties to arbitration.

4. As required by the arbitration agreement between the parties, the petitioner had also suggested the name of a former learned Additional District and Sessions Judge as well as two advocates practising in the Supreme Court of India as prospective arbitrators to



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arbitrate on the disputes between the parties. There was no response to the said communication, thereby, compelling the petitioner to approach this Court under Section 11(6) of the 1996 Act for appointment of an arbitrator to arbitrate on the dispute.

5. Learned Counsel for the respondent only submits that a large part of the amount claimed by the petitioner has been paid by the respondent and his client is willing to make the remaining payment in instalments.

6. He also submits that the petitioner has been erroneously referring to his client as Mr. Rinku instead of Mrs. Rinku.

7. Neither of these contentions can be relevant while disposing of a petition under Section 11(6) of the 1996 Act. In view of the recent decision of the Supreme Court in *SBI General Insurance Co Ltd v. Krish Spinning*², the Court is only required to examine whether there exists an arbitration agreement between the parties and whether the petition has been filed within three years of the Section 21 notice invoking arbitration.

8. The Supreme Court has, in the said decision, also categorically held that a defence of the claim having been discharged by accord and satisfaction can also not be seen by the Court exercising jurisdiction under Section 11(6) of the 1996 Act and has to be relegated to the arbitral tribunal.

² 2024 SCC OnLine SC 1754



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9. In that view of the matter, this court appoints Mr. Pramod Sehgal, Advocate (Mob: 9810027366) as the arbitrator to arbitrate on the dispute between the parties.

10. The learned arbitrator shall be entitled to charge fees as per the Fourth schedule of the 1996 Act.

11. The learned arbitrator is also requested to file requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

12. All questions of fact and law are left open to be agitated before the learned arbitrator.

13. This Court has not expressed any opinion on any issue in controversy one way or the other.

14. The petition stands allowed in the aforesaid terms.

C.HARI SHANKAR, J

AUGUST 28, 2024/aky

Click here to check corrigendum, if any