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

+ **ARB.P. 1183/2022**

ZIMMER INDIA PVT LTD

.....Petitioner

versus

AFFIANCE MEDI TECH PRIVATE LIMITED

.....Respondent

+ **ARB.P. 1186/2022**

ZIMMER INDIA PVT LTD

.....Petitioner

versus

AFFIANCE MEDI TECH PRIVATE LIMITED

.....Respondent

Appearance:-

Mr. Siddharth Bawa, Advocate for Petitioner-Zimmer India Pvt. Ltd. in Item Nos. 1 & 2.

None for the Respondent-Affiance Medi Tech Private Limited in Item Nos. 1 & 2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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03.07.2024

1. The petitioner has filed these two petitions under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], for appointment of an arbitrator to adjudicate disputes between the parties, arising under two distribution agreements, both dated 04.08.2017.

2. The agreement which is the subject matter of ARB.P. 1183/2022 was executed between the petitioner and the respondent, whereas the agreement which is the subject matter of ARB.P. 1186/2022 was



executed between Biomet Orthopaedic India Private Limited [“Biomet”] and the respondent. The rights and liabilities of Biomet under the latter agreement have been transferred to the petitioner herein, by virtue of a Scheme of Amalgamation approved by the National Company Law Tribunal vide order dated 12.09.2018 in CP No. 136/2016.

3. Under both agreements, the respondent was appointed as a distributor of medical devices on behalf of the petitioner/Biomet. Both agreements contain clauses for alternative dispute resolution [Item 10 of the Reference Schedule read with Clause 22], which provide for arbitration to be held in New Delhi by a mutually appointed sole arbitrator. Failing agreement as to the sole arbitrator, each party would be entitled to appoint an arbitrator and the two arbitrators would jointly appoint a third arbitrator.

4. Disputes having arisen between the parties, the petitioner terminated both distribution agreements by letter dated 12.12.2019. It raised a demand upon the respondent by a legal notice dated 03.11.2021, in the amount of approximately ₹5.19 crore [consolidated for both agreements].

5. As the demand notice was not complied with, the petitioner, through counsel, invoked the arbitration clause by separate legal notices dated 05.05.2022, which failed to elicit a response. By the said notices, the petitioner also proposed the appointment of Hon’ble Mr. Justice K. Ramamoorthy, former Judge of this Court, as the sole arbitrator. It was also stated that in case the respondent is not agreeable to the proposed appointment, then Hon’ble Mr. Justice K. Ramamoorthy would act as the petitioner’s nominee on the arbitral tribunal.



6. In these circumstances, the petitioner has filed these petitions seeking appointment of an arbitrator in lieu of the respondent's nominee on the arbitral tribunal.

7. Notice was issued in both the petitions on 19.10.2022. As the respondent remained unserved, the learned Joint Registrar, by orders dated 03.11.2023, permitted service by publication. The orders of the learned Joint Registrar dated 12.03.2024 record that the service by publication has been completed on 23.12.2023.

8. Mr. Siddharth Bawa, learned counsel for the petitioner, also states that the address of the respondent mentioned in the memo of parties remains the registered office of the respondent, as available on the Ministry of Corporate Affairs, Government of India database even today. In these circumstances, I am satisfied that the respondent has been duly served.

9. At this stage, it is sufficient to note that the petitioner has made out a *prima facie* case with regard to the existence of an arbitration agreement between the parties and invocation thereof. The respondent has chosen not to enter appearance and has failed to controvert the contentions of the petitioner in the petitions.

10. Consequently, the petitions are allowed and Hon'ble Mr. Justice R.K. Gauba, former Judge of this Court [Tel:-9650411919] is appointed as the member of the arbitral tribunal under both agreements, in lieu of the respondent's nominee. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

11. The learned Arbitrators are requested to ensure that the presiding



arbitrator is nominated within a period of 30 days from today.

12. It is also directed that the arbitral proceedings will be treated as separate arbitral proceedings under the two contracts for all purposes, although the Arbitral Tribunal may decide whether it will hold the proceedings jointly or separately.

13. The arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi-110503 [“DIAC”] and subject to the Rules of DIAC, including as to the remuneration of the learned Arbitrators.

14. As the respondent has not entered appearance in these proceedings, it is made clear that the respondent will be served afresh in the arbitral proceedings, in accordance with the Rules of DIAC.

15. The petitions stand disposed of with these directions.

PRATEEK JALAN, J

JULY 3, 2024

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