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

+ **ARB.P. 45/2024**

AMAZING RESEARCH LABORATORIES LTD Petitioner

Through: Mr. Abhishek Sandillya, Advocate
(M: 7827288178).

versus

M/S KRISHNA PHARMA

..... Respondent

Through: Mr. Y.T. Aravind Gosh & Mr.
Gunaalan Ravi, Advs. (M:
9940026968)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 21.03.2024

1. This hearing has been done through hybrid mode.
2. This is a second round of invocation of arbitration. The Petitioner seeks appointment of an Arbitrator. In the first round, the award was passed by Id. Sole Arbitrator dated 19th November, 2019.
3. The Petitioner in the present case is engaged in the business of manufacturing and selling pharmaceutical formulations in the form of tablets, capsules, dry syrups *etc.* The Respondent entered into a Distributor on Consignee Agency Basis Agreement with the Petitioner dated 28th December, 2007. The said agreement was valid for the period of two years and thereafter it was renewed on 1st April, 2010 for a further period of two years. A fresh agreement was entered into on 12th November, 2012 for a period of three years.
4. According to the Petitioner, there were delays in making complete



payments or various short payments were made by the Respondent, which led to invocation of arbitration in the first round. Thereafter Mr. Mukul Gupta was appointed as the Id. Arbitrator wherein the Petitioner claimed an amount of Rs. 3,38,33,695/- out of which the Respondent admitted liability to the amount of Rs. 1,64,73,786/-. Subsequent to this, vide award dated 19th November, 2019 a sum of Rs. 28,92,620/- was awarded in the favour of the Petitioner. It is averred by the Petitioner that a substantial part of the outstanding claim has been rejected.

5. The award rendered by the Sole Arbitrator was set aside by this Court in ***O.M.P.(COMM) 376/2020*** vide order dated 13th March, 2023. The conclusion in the said order is set out below:

“75. In the light of above discussion, it is held that the impugned Award suffers from patent illegality to the extent of rejection of Claim for Rs.2,36,07,051/- out of the total Claim of Rs.2,64,99,671/- (excluding interest) and is hereby set aside. The parties are at liberty to take appropriate remedy or initiate the arbitration proceedings afresh as per law. No order as to costs is made in the given circumstances.”

6. Since the Court has held that the rejection of the claim by the Arbitrator to the tune of Rs.2,36,07,051/- was suffering from patent illegality, the parties were given liberty to initiate arbitration proceedings afresh. Thereafter the Petitioner re-invoked the arbitration vide a legal notice dated 5th October, 2023 claiming balance of outstanding principal amount of Rs. 2,36,07,051/- and for recommending an arbitrator. The Respondent did not reply to the aforementioned notice regarding appointment of an arbitrator which led to filing of the present petition.

7. Notice was issued in this petition on 12th January, 2024. Mr. Y.T.



Aravind Gosh, Id. Counsel has entered appearance on behalf of the Respondent. The arbitration clause in the contract reads as under:-

“21. Any difference or dispute arising out of or in relation to anything contained herein shall be referred to arbitration. The Arbitration shall be conducted in accordance with the ARbitration and Conciliation Act, 1998 or any statutory modification or re-enactment thereof for the time being in force. The place of arbitration shall be Delhi.

22. It is hereby expressly agreed and declared that this Agreement shall be deemed to have been made in Delhi and that the Courts at Delhi only will have jurisdiction on all matters arising out of the Agreement.”

8. In terms thereof, **Justice Raghavendra Chauhan (Retd.) (M:7022891674)** is appointed as a Id. Sole Arbitrator to adjudicate upon the disputes between the parties.

9. The reference is in respect of the amounts claimed by the Petitioner under agreements dated 28th December, 2007, 12th November, 2012 and the renewed agreement dated 22nd May, 2015. Thus, the Id. Arbitrator shall also consider the previous arrangements between the parties while adjudicating the disputes.

10. The Arbitration proceedings shall take place under the aegis of the Delhi International Arbitration Centre (*hereinafter, DIAC*). The arbitration proceedings shall be conducted under the Rules of DIAC. The fee of the Id. Sole Arbitrator shall be as per the Fourth Schedule of the Act, as amended by the DIAC.

11. List before the DIAC on 5th April, 2024. Let a copy of the present order be emailed to Secretary, DIAC on email id-



delhiarbitrationcentre@gmail.com.

12. Accordingly, the petition is disposed of. Any pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

MARCH 21, 2024

mr/ks