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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 8th February, 2024.*

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ARB.P. 48/2024, I.As. 3082/2024 & 3083/2024**CGMP PHARMA N PLANS PRIVATE LIMITED.....** PetitionerThrough: Mr. Keshav Datta, and Mr. Rupal
Luthra, Advs. (M. 9871919591)

versus

HYS LIFECARE LLP

..... Respondent

Through: Mr. Malak Bhatt, Ms. Neeha
Nagpal, Mr. Shreyansh Chopra,
Advs (M. 9654661233)**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter, '*the Act*') for appointment of an Arbitrator. The dispute arises out of a contract between the parties in regard to services for Concept, Basic, Detailed Engineering, Qualification & Validation Services for New Formulations Facilities (pharmaceutical facilities) at Ahmedabad.
3. The case of the Petitioner is that even though the project was not expressly terminated by the Respondent, the Petitioner had various outstanding payments which were to be made. An email dated 4th July, 2019 was written to the Respondent mentioning that the total outstanding amount is for Rs.1,04,85,000/-. This amount, despite repeated reminders, has not been cleared by the Respondent. In addition, Id. Counsel for the Petitioner submits that in this sector, it is usual for the contracts to be



extended for several years considering the nature of the contract.

4. On the question of limitation, Id. Counsel has relied upon a chart of payment which shows that the last payment was received on 31st January, 2019. However, insofar as the computation of limitation is concerned, Id. Counsel submits that the period in terms of the Hon'ble Supreme Court's decision in passed in ***Suo Moto Writ Petition (C) No.3/2020*** titled ***In Re: Cognizance For Extension of Limitation*** deserves to be excluded.

5. Id. Counsel for the Respondent, however, states that in the present case, the decision in ***In Re: Suo Moto*** would not be applicable as neither the limitation has expired during the Covid period nor does the order of the Supreme Court apply in respect of invocation of Arbitration under Section 21 of the Act.

6. However, Id. Counsel for the Petitioner relies on the decisions in ***Paramjeet Singh Narula v. Delhi Development Authority (2009 SCC OnLine Del 2948)*** and ***Dr. Reddy Laboratories Limited v. Controller General of Patents and Trademarks and Ors. (2022 SCC OnLine Del 813)*** to state that the entire period of limitation between 15th March, 2020 and 28th February, 2022, is to be clearly excluded.

7. The Court has perused the matter. The question of limitation at this stage of appointment of the Arbitrator, requires to be considered *prima facie* only.

8. The last payment in this case to the Petitioner was received on 31st January, 2019. The email written by the Petitioner on 4th July, 2019 and ten reminders of the same were issued by the Petitioner. Finally, the invocation of the arbitration clause was on 18th October, 2023.

9. Id. counsel for the Petitioner further submits that even prior to the



invocation of the arbitration clause, some work was even being implemented for the Respondent.

10. A perusal of the decision in *In Re: Suo Moto* would show that the period of limitation i.e. 15th March, 2020 to 28th February, 2022 deserves to be excluded.

11. However, the contention of the Respondent also deserves to be kept open inasmuch as if the date when limitation expired, did not fall within the Covid pandemic period, whether the decision in *Re: Suo Moto* would apply, would still have to be adjudicated by the Id. Arbitrator.

12. This Court is of the opinion that the petition does not deserve to be dismissed as being barred by limitation at this stage, as there are a number of facts that would be required to be considered. Both parties submit that instead of a three member tribunal, a Sole Arbitrator may be appointed. Accordingly, with the consent of parties, a Sole Arbitrator is appointed. **Justice Asha Menon (Retired) (M:9910384664)** is appointed as the Sole Arbitrator in this matter.

13. The question of the claims being barred of limitation may be raised by the Respondent in the arbitral proceeding which shall be decided in accordance with law, without being affected by any observation made in this order.

14. With the consent of parties, the matter is referred to the India International Arbitration Centre (IIAC). Parties to appear before the IIAC on 20th March, 2024. The details of the IIAC are as under:

Address: India International Arbitration Centre, Plot No. 6, Institutional Area, Vasant Kunj, New Delhi - 110070.



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15. The fees of the Arbitrator shall be as per the Fourth Schedule to the Act. A copy of this order be communicated to the Registrar, IIAC at mob no. **9810759224** and email: registrar@indiaiac.or.

16. Petitioner along with all pending applications is disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 08, 2024

Rahul/bh