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

\+ **ARB. A. (COMM.) 9/2024 and I.A. 5851/2024**

M/S DUC TOAN MEDICAL (I) PVT LTD ..... Petitioner

Through: Mr. Sanjay Yadav & Mr. Shekhar Nehra, Advs. (M:9680826996)

versus

DR. M. D. KSHIRSAGAR AND ANR ..... Respondents

Through: Mr. Akshay Ringe, Ms. Megha Mukerjee, Mr. Dhananjay Gupta, Ms. Shelly Singh, Advs.(M: 9910664137)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% **22.03.2024**

1. This hearing has been done through hybrid mode.

2. Early hearing is allowed. Application ***I.A. 5851/2024*** is disposed of.

3. This is an appeal preferred by the Appellant-M/s. Due Toan Medical (I) Pvt. Ltd. under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 *(hereinafter, 'the Act')* challenging the impugned order dated 12th September, 2023 passed by the ld. Sole Arbitrator. The dispute between the parties pertains to a Distribution Agreement entered into between the parties. The case of the Appellant is that it had entered into an Agreement dated 23rd December, 2008 by which the Respondent No.2- M/s. Genetek Biosciences, through its director - Dr. M.D Khsirsagar, was appointed as the distributor of contrast media products. Under the said Agreement, Respondent No. 2 was responsible for producing contrast media products and was also required to

engage in research and development to innovate the manufacturing technology, aiming to reduce production costs (Clause 2.1, Article 2 of the Agreement). Furthermore, the Claimant was obligated to purchase the products manufactured by Respondent No. 2 (Clause 3.1, Article 3 of the Agreement).

4. According to the Appellant, the said Agreement contemplated two separate set of territories, (i) the Appellant's territory i.e., (North, East & some central state (M.P) of India) and (ii) the Respondents' territory i.e., (South, West & some central state (Chhattisgarh) of India).

5. The Respondents were not permitted to sell in the Appellant's territory and sale had to take place only through the Appellant. However, this clause was allegedly breached by the Respondents. Hence, the Appellant had invoked arbitration.

6. In the said arbitration proceedings, the Appellant filed an application under Section 17 of the Act, seeking the rendition of accounts by the Respondents. The basis for this request was that the accounts regarding the sales should be examined to allow the Appellant to quantify its claims. The ld. Sole Arbitrator dismissed the application. The impugned order reads as follows:

> *"In the third case Hon'ble Delhi High Court has relied upon the earlier two judgements. Similarly, in K.C. SKARIA the Hon'ble Supreme Court has followed and explained the first judgment. The law laid down in those judgments is clear that a plaintiff should have a right under some statute or under agreement to claim benefits by asking the other side to render accounts. In the present case, reliance has been placed only on the allegations in then SOC that Respondents have violated the agreement. No provision in the agreement*

entitles the Claimant to rendition of accounts by Respondent no.2 or to any monetary benefits flowing from such accounts. Hence, it is found that at this stage when the evidence is still to be led, there is no scope to grant as interim relief the main relief no.1 for rendition of accounts claimed in the SOC. The prayers in the application are accordingly declined.

The third application by the Claimant is to implead Rongen and Company as Claimant no.2, Cadimage as Claimant no.3 and Genetek Lifesciences as Respondent no.3, on going through the pleadings in the SOC and the Reply to the application filed by the Respondents, it is found that the proposed parties are not privy to the Arbitration agreement and moreover there is no allegation or relief claim against the proposed Respondent no.3. Similarly, no role has been shown to have been played by proposed Claimant no.2 & 3. The materials on record do not justify the prayer to add them as parties. Hence, this application is rejected.

Ld. Counsel for the Claimant has agreed to communicate suggested issues through email by tomorrow along with list of witnesses. The Tribunal shall finalize the issues in the next meeting through Video Conferencing on 25.09.2023 at 3:00 pm. DIAC shall make arrangements for the next meeting and also finalize the quantum of fee in the light of revised valuation to be submitted by Ld. Counsel for the Claimant by tomorrow."

7. On 5th February, 2024, notice was issued in this matter. Ld. Counsel for the Respondent has entered appearance and, initially, submitted that the appeal was not filed within the limitation prescribed under Section 13 of the Commercial Courts Act, 2015. Thus, this Court on 27th February, 2024, directed the Appellant to file an affidavit giving the details of the dates of

filing and when the matter was cleared for objections, as the first listing before this Court was on 5th February, 2024. In terms of the said order, the Appellant has filed an affidavit dated 5th March, 2024, where the Appellant states as follows:

> *"3. I say that the impugned order is passed on 12.09.2023, by the Ld. Sole Arbitrator and the Appeal was filed on 19.10.2023 at 8:44 PM, last objection was raised on 01.02.2024 and cleared on 02.02.2024. A copy of filing history is annexed herewith and marked as Document - I.*
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> *4. The Appeal is within limitation period of the Arbitration and Conciliation Act, 1996 and the Commercial Courts Act, 2015 as the limitation period prescribed under respective acts is 60 days and limitation would have expired on 11.11.2023. Thus, the Appeal is within the limitation period."*

8. The Court has considered the case history and the affidavit filed by the Petitioner. The first filing of the appeal was done on 19th October, 2023, though, the first listing was 1st February, 2024. Thus, it cannot be said that the initial filing was not within time.

9. Heard. This Court in ***Dinesh Gupta & Ors vs. Anand Gupta (2020 SCC Online Del 2099)*** has held that while exercising any kind of jurisdiction, over arbitral orders, or arbitral awards, whether interim or final, or with the arbitral process itself, the Court is required to maintain an extremely circumspect approach. Thus, the scope of interference under Section 37(2)(b) of the Act is extremely narrow.

10. Considering the above position, this Court is of the opinion that regarding the merits of the case, since the ld. Sole Arbitrator has determined that the direction for the production of accounts cannot be issued against the

Respondent at the stage when the Section 17 application was decided, the Petitioner is free to quantify its claims in accordance with law, and the same shall be considered by the ld. Arbitrator.

11. Additionally, if at the final stage, the ld. Arbitrator concludes that the accounts deserves to be disclosed, then the rendition of accounts remains as an available remedy, and the impugned order would not stand in the way.

12. In terms of the above, the appeal is disposed of. All pending applications are disposed of. All the rights and contentions of the parties are left open.

PRATHIBA M. SINGH, J.

MARCH 22, 2024
dj/dn