
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.429 OF 2024

M/s. Medtech Life Pvt. Ltd.

...Applicant

Versus

M/s. Phyfix Fitness Solution Pvt. Ltd.

...Respondent

Appearance not received.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 2, 2025

PC :

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (*“the Act”*) seeking appointment of an arbitrator in connection with disputes and differences arising out of a Distribution Agreement dated July 1, 2019 (*“Agreement”*). The arbitration agreement is contained in this Agreement. In the interest of brevity, the same is not reproduced here. Suffice it to say that the matter falls within the jurisdiction of this Court.

2. Having heard the parties for some time, it is apparent that the existence of the arbitration agreement is not in dispute. Likewise, the objection to existence of an arbitration agreement does not exist, although the Respondent’s contention is that the claim is time-barred.

According to him, invocation has been effected three years and two months after the cause of action arose.

3. Be that as it may, the aforesaid contention is squarely a question of limitation, which involves a mixed question of fact and law that must necessarily fall in the domain of the arbitral tribunal. Taking into account that since the disputes between the parties is only over the identity of the arbitrator.

4. Needless to say, while there is no expression of opinion on merits one way or the other, even the issue of limitation is squarely left open for the Learned Arbitral Tribunal appointed hereby to deal with, when the parties make their submissions on this issue before the arbitral tribunal.

5. In these circumstances, this Application is ***finally disposed of*** by referring all disputes and differences covered by this proceeding to arbitration by the Learned Sole Arbitrator hereby appointed in the following terms:-

A] Mr. Vivek Salunkhe, a Learned Advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above.

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration and;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

6. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the

parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

7. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]