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

+ ARB.P. 1930/2024, I.A. 46999/2024
PHARMACEUTICALS AND MEDICAL DEVICES BUREAU OF
INDIAPetitioner

Through: Mr. Manjit Kumar Pathak, Advocate.

versus

TERRACE PHARMACEUTICALS PVT LTDRespondent
Through: Mr. Tarun Kumar Mishra, Advocate.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER
03.03.2025

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1. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the Petitioner and the Respondent under a tender bearing No.42/2016 invited by the Petitioner for supply of generic medicines.
2. It is stated that the Respondent herein was given the aforesaid tender. It is stated that certain defective medicines were supplied by the Respondent. It is stated that recoveries were initiated by the Petitioner to recover the said medicines and according to the Petitioner, the debit note was issued to the Respondent on 19.12.2019, whereas according to the Respondent the same was issued on 13.08.2018.
3. Taking 13.08.2018 as *terminus quo* for calculating the limitation and excluding the period between 15.03.2020 to 28.02.2022 for computing the limitation as held by the Apex Court in **Suo Motu Writ Petition (C)**



No.3/2020 titled as Re: Cognizance for Extension of Limitation, the Petitioner has invoked the arbitration within the period of three years as contemplated under Article 137 of the Arbitration and Conciliation Act, 1996.

4. The present case would not come within the definition of dead/stale claim as defined by the Apex Court in Arif Azim Co. Ltd. vs. Micromax Informatics FZE, **2024 SCC OnLine SC 3212** and SBI General Insurance Co. Ltd vs. Krish Spinning, **2024 SCC OnLine SC 1754**. This Court is not making any observations as to whether the claim is barred by limitation, leaving it open for the Ld. Arbitrator to take a decision. It is stated that the Respondent has its own counter-claim.

5. In an analogous tender, this Court in an arbitration petition being ARB.P. 436/2023 has appointed Ms. Raavi Birbal, Advocate, as the Arbitrator to adjudicate upon the disputes between the parties.

6. In view of the fact that the dispute in the present case is more or less similar to ARB.P. 436/2023, this Court is inclined to appoint Ms. Raavi Birbal, Advocate (Mob. No.9818024661) as the Arbitrator to adjudicate upon the disputes between the parties.

7. It is made clear that this Court has not made any observations regarding the limitation or the arbitrability of dispute sought to be raised by the Petitioner.

8. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

9. The learned Arbitrator is also requested to file the requisite disclosure



under Section 12(2) of the 1996 Act within a week of entering on reference.

10. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

11. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

12. The present petition stands disposed of in the above terms, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 03, 2025

S. Zakir