

SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

ARBITRATION PETITION NO. 12 OF 2010

SUPER RELIGARE LABORATORIES LTD.

Petitioner(s)

VERSUS

GOOD HEALTH MEDICAL SERVICES LTD.

Respondent(s)

O R D E R

By way of this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with paragraph 2 and 3 of the "Appointment of Arbitrators by the Chief Justice of India Scheme 1996", the petitioner seeks appointment of the Arbitrators in terms of Arbitration Clause 7.2.4 of the Agreement between the parties.

It appears that the petitioner-company is engaged in the business of operating Clinical Laboratories tests and is capable of furnishing high quality Reference Testing Services.

The respondent approached the petitioner-company and expressed its desire to enter into the contract with the petitioner-company and to be its primary provider of Reference Testing Services from Kathmandu, Lalitpur, Bhaktpur and Kavre in Nepal.

Accordingly, the parties entered into the agreement dated 01.11.2005. The contract contained Arbitration Clause in the form of Clause 7.2.4,

which is reproduced as under :-

"7.2.4 In the event of any dispute or difference between the parties in respect of or concerning with the interpretation or implementation of this Agreement or arising out of this Agreement such dispute or difference shall be referred to Arbitration by three arbitrators, one arbitrator to be appointed by each of SRL and the Centre; and the third arbitrator to be appointed by the two arbitrators appointed by SRL and the Centre, in accordance with the Arbitration and Conciliation Act, 1996, or any statutory modification or amendment thereof or the applicable arbitration

law for the time bring in force in India. The Arbitration shall be held in Mumbai. The decision of such arbitration shall be binding and conclusive upon the Parties and may be enforced in any court of competent jurisdiction. The Parties to the arbitration shall equally share the costs and expensed or any such arbitration. The exercise of any dispute(s) or difference(s) or initiation or continuance of the arbitration proceedings shall not permit the Parties to postpone or delay the performance by the Parties to the arbitration of their respective obligations pursuant to this Agreement. If court proceedings to stay litigation or compel arbitration are necessary, the Party who unsuccessfully opposes such proceedings shall pay all associate costs, expenses and attorney's fees, which are reasonably incurred by the other Party to the arbitration."

It appears that the petitioner had provided certain services to the respondent, however, the respondent has failed to make the payment in respect of the invoices, details of which are mentioned in paragraph 9 of the petition and are reproduced as under :-

"

INVOICE NO.	INVOICE DT.	INVOICE IN RS.	DUE DT.
908031621	19/07/2008	41816.41	22/07/2008
908042037	23/08/2008	90432.79	26/08/2008
908045382	31/08/2008	134575.90	4/9/2008
908047259	6/9/2008	40957.50	9/9/2008
908049748	13/09/2008	61701.39	16/09/2008
908052077	20/09/2008	64259.36	23/09/2008
908054548	27/09/2008	79263.90	30/09/2008
908056114	30/09/2008	37383.21	3/10/2008
908056960	4/10/2008	14096.27	7/10/2008
908059029	11/10/2008	51663.72	15/10/2008
908060999	18/10/2008	27828.83	22/10/2008
908063039	25/10/2008	59594.41	28/10/2008
909064710	31/10/2008	67585.50	4/11/2008
908066646	8/11/2008	67236.67	12/11/2008
908069040	15/11/2008	52411.87	19/11/2008
908071010	22/11/2008	38733.97	26/11/2008
908073537	30/11/2008	17802.69	3/12/2008
	TOTAL	947344.39	

"

The repeated requests made by the petitioner-company for payment of the outstanding dues have been unsuccessful, as the respondent has declined

to pay the said amount.

Since the amounts were not being paid, the petitioner issued a legal notice on 12.02.2009, requesting the respondent to desist from exploiting the trade mark of the petitioner and also clear the outstanding dues within seven days of the receipt of the notice. It was pointed out that in the event of respondent not clearing the dues and not issuing the necessary clarification, the petitioner would be constrained to initiate legal proceedings against the respondent.

Still, no reply was received from the respondent, which prompted the petitioner to invoke the Arbitration Clause by sending Arbitration notice dated 29.01.2010. In the Arbitration notice, the petitioner had clearly mentioned that it has already appointed one Mr. Ravi Sodhi, Former Additional Advocate General of Punjab as the Arbitrator for the petitioner. The respondent was requested to make the appointment of its Arbitrator within thirty days of the receipt of the notice. The respondent has duly received the notice, but has failed to send any confirmation even after the expiry of thirty days.

Therefore, the present petition was filed on 12.07.2010. The petitioner claims a sum of Rs.9,47,344.39 along with interest payable in consonance with the specific terms of the Agreement dated 01.09.2008.

Notice was duly issued in the aforesaid petition. However, the petitioner was having some difficulty in effecting service. Ultimately, service has been effected on the respondent, as is evident from the Affidavit of Service filed by the petitioner dated 30.04.2012.

Upon perusal of the record, I am satisfied that in spite of service, the respondent has failed to put in appearance, either in person or through its authorised representative/counsel.

Needless to say, no counter affidavit has been filed to the petition. Therefore, the averments made in the petition remained uncontroverted.

Consequently, the averments made have to be accepted in toto.

In view of the above, clearly, bonafide disputes exist between the parties, hence, it would be in the interests of justice to refer all the disputes arising between the parties in relation to the agreement to Arbitration.

The parties are entitled to submit their respective claims before the Arbitrators, which need not be limited to the submission made by the petitioner in the present petition.

Arbitration Clause 7.2.4 clearly states that any dispute arising between the parties is to be referred to three arbitrators.

Learned counsel for the petitioner submits that they have already appointed Mr. Ravi Sodhi, Former Additional Advocate General of Punjab as the Arbitrator for the petitioner, whose address is as under :-

"Mr. Ravi Sodhi
Former Additional Adv. General, Punjab
#2, Sector-12, Panchkula
Haryana"

Since the respondent has not entered appearance, the petitioner, on the request of the Court, has suggested the name of one Mr. Trushar Bhavsar, Advocate for appointment as the second arbitrator, whose address is as under :-

Mr. Trushar Bhavsar, Advocate

3rd Floor, Crescent Chambers
Tararind Lane, Fort,
Mumbai - 1
(M) 09930303144

The suggestion of the respondent is accepted.

Accordingly, I nominate Mr. Trushar Bhavsar, Advocate, as the second arbitrator.

Mr. Ravi Sodhi and Mr. Trushar Bhavsar will jointly appoint the third arbitrator and shall be at liberty to fix their own remuneration at their discretion.

The venue of the Arbitration, according to the agreement, is Mumbai, however, the Arbitrators shall be at liberty to hold the meetings of the Arbitration at any convenient place.

It is made clear that the Arbitrators shall be at liberty to adjudicate on all the issues raised in the petition.

The Registry is directed to communicate this order to abovenamed two arbitrators, so that the Arbitrators can enter upon reference as expeditiously as possible.

The Arbitration Petition is, accordingly, disposed of.

No order as to costs.

.....J.
[SURINDER SINGH NIJJAR]

NEW DELHI
MAY 03, 2012
ITEM NO.401

COURT NO.13 SECTION XVIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

ARBITRATION PETITION NO. 12 OF 2010

SUPER RELIGARE LABORATORIES LTD. Petitioner(s)

VERSUS

GOOD HEALTH MEDICAL SERVICES LTD. Respondent(s)

(With office report)

Date: 03/05/2012 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Petitioner(s) Ms. Nidhi Parashar, Adv.
 Mr. Navin Chawla, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The Arbitration Petition is disposed of in terms of the
Signed Order.

(Jayant Kumar Arora)
Sr. P.A.

(Indu Satija)
Court Master

(Signed order is placed on the file)