

Via Video Conferencing

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

+ **O.M.P.(I) (COMM.) 422/2020**

VINEET SINGH CHAUHAN & ANR. Petitioners

Through Mr. Amit Singh Chauhan, Mr. Zafar
Khurshid and Mr. Siddharth Agarwal,
Advs.

versus

M/S. GENESTORE INDIA PVT. LTD. & ORS. Respondents

Through None.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **17.12.2020**

I.A. 12209/2020 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking the following reliefs:

“(I) Grant an injunction against the Respondents restraining the Respondents from dealing with or executing any agreement/MOU/contract either directly or through any of their respective agents, representatives, actors, entities, etc. with any medical labs, companies, institutes etc. in respect of the products mentioned under the Agreements, where such dealings do not acknowledge and protect the rights of the Petitioners under the Agreements,

(II) Grant an injunction against the Respondents from initiating and indulging in any negotiations/talks with any present or prospective client without following the procedure prescribed per the terms of the Agreement, including but not limited to immediately honouring the Petitioners' Right of First Refusal under Clause 2.6 of the Agreement,

(III) Deposit with the Hon'ble Court an amount of Rs. 2,51,50,000/- being the sum of money for the "Promised Benefits" as were promised and represented time and again by the Respondents,

(IV) Appoint a receiver/local commissioner to seize and take into his/her custody the detailed accounts I POs I bank statements etc. to verify the actual sales done by the Respondents,

(V) Direct the Respondent No. 1 Company to deposit an amount to the extent of 15% of the total sales done by it from the month of October, 2020 till the time the present petition is disposed of.

(VI) Issue warrants of attachment for the bank accounts of the Respondents, which have been used to receive the monies, which as duly owed to the Petitioners, as per Para 22 of the Petition, and

(VII) Issue injunction order against the Respondents, restraining them from transferring any licenses, permissions, trademark or any other intellectual property right to any third party."

4. At the very outset, learned counsel for the petitioners makes an oral prayer for deletion of respondent nos. 5 to 7 from the array of parties, as they are not the parties to the Agreement containing the arbitration clause.

5. The oral request of learned counsel for the petitioners is accepted and the names of respondent nos. 5 to 7 are deleted from the array of parties. An amended memo of parties be filed within two days.

6. Learned counsel for the petitioners submits that the petitioner no. 2

was approached by the respondent no. 1 through respondent no. 4, who was looking for an investment/loan to launch their testing kits in India, as also to seek the petitioner's strategic consultancy services regarding establishing distribution and sales of the said testing kits in the Indian market. The petitioner was, in turn, offered testing kits at a minimal price, as also equity shares in respondent no. 1 company. Relying on the representations made by the respondent, the petitioner entered into an Agreement with respondent no.1 on 08.05.2020, which was followed by an Agreement dated 09.05.2020, according to which, the petitioners were given the right of first refusal on any leads/ projects/deals pertaining to the products as mentioned in Annexure A of the said Agreement; for which purpose, he draws the attention to Clause 2.6 thereof. In accordance with the terms of the said Agreement, all the kits were required to be sold by respondent no.1 through the petitioner's leads and, in turn, the petitioners were entitled to receive 25% shares in the net proceeds from the sale of all COVID-related products; which amount was subsequently reduced to 15% vide an Addendum dated 11.07.2020.

7. Mr. Amit Singh Chauhan, learned counsel for the petitioner, further draws my attention to Clause 5 of the Agreement whereunder the respondent no.1 had specifically agreed not to circumvent or attempt to circumvent the provisions of the agreement and contends that the petitioners have recently learnt that respondent no.1 is now trying to sell its products through a newly incorporated company, *i.e.*, respondent no.2 and a defunct company, *i.e.*, respondent no. 3, which has already been struck off from the rolls of the Registrar of Companies. He submits that this action of the respondent is not only dishonest but is in blatant disregard of the terms of the agreement and

has caused huge financial loss to the petitioner as the respondent no.1 has, in the last few months, sold the kits to various entities as set out in Para 18 of the petition, without paying the agreed revenue to the petitioner, which amount, as on date, works out to be Rs.2,51,50,000/-. He further submits that the petitioners have also learnt that the respondents, in order to deprive the petitioners of their rightful dues under the aforesaid Agreements, are now trying to divert their funds and redirect their business to France and, therefore, prays that the respondents be restrained from dealing with any third-party in respect of the products which are the subject matter of the aforesaid Agreements.

8. Upon the petitioners filing process fee within a week, issue notice to the respondent through all permissible modes including electronic modes, returnable on 25.01.2020. Reply be filed within three weeks. Rejoinder thereto, if any, may be filed in a week thereafter.

9. Having considered the submissions of learned counsel for the petitioners; till the next date, the respondents are directed not to create any third-party rights in their assets to the tune of Rs.2,51,50,000/-.

10. List on 25.01.2021.

REKHA PALLI, J

DECEMBER 17, 2020

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