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

+ ARB.P. 24/2008

28th February, 2008

M/S VIJAY KUMAR WASTE PRODUCTS Petitioner

Through Mr. Hanu Bhaskar, Advocate

versus

LOK NAYAK HOSPITAL & ANOTHER Respondents

Through Ms. Zubeda Begum, Advocate

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

1. **Whether reporters of local papers may be allowed to see the judgment?**
2. **To be referred to the Reporter or not?**
3. **Whether the judgment should be reported in the Digest?**

Mr. Justice S. Ravindra Bhat (Open Court)

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act. The petitioner and the respondents entered into a contract for lifting and treatment of bio-medical wastes in the Lok Nayak Hospital. The petitioner claims to have been performing this job for the last eight years. The contract was awarded on 28th December, 2006 and was to be valid for two years i.e. for 1st January, 2007 to 31st December, 2008. It is alleged that the respondents issued a letter on 6th November, 2007 terminating the contract w.e.f. 1st January, 2008.

2. The petitioner relies upon Clause 21 of the terms and conditions of the tender documents which govern the contract, (being incorporated in the terms by virtue of Clause 7) to say that inter se disputes are to be resolved through arbitration. The said Clause is as follows:

*“21. **Disputes and Arbitration:** All disputes of differences arising during the execution of the contract shall be received by the mutual discussion, failing which the matter will be referred to the Secretary (Law, Justice and Legislative Affairs), Government of NCT of Delhi or his nominee for arbitration whose decision shall be binding on the contracting parties.”*

3. Learned counsel for the petitioner relied upon a letter dated 12th November, 2007 addressed to the respondents calling upon them to resolve the differences through mutual discussion failing which to refer the disputes of termination of contract to the Secretary (Law, Justice and Legislative Affairs), Government of NCT of Delhi. In these circumstances, an order under Section 11(6) is sought for.

4. Ms. Zubeda Begum, learned counsel for the respondents urged that the petition is premature. According to her, the letter dated 12th November, 2007 cannot be considered as one invoking the arbitration clause. She relied upon para 8 of the said letter to say that the petitioner only sought for resolution of disputes from mutual discussion. In the circumstances, the petition was premature. It was next contended that the petitioner ought to have satisfied the Court that the attempts to have the disputes settled through mutual discussion failed and as a result second notice to appoint the Arbitrator was necessary. Since this course was not adopted, the Court should not invoke its jurisdiction and appoint an Arbitrator.

5. The Arbitration Clause in this case, no doubt, indicates that in the first instance parties should

resolve their disputes mutually through negotiations. The letter dated 12th November, 2007 has to be seen in the context of the contract which was valid for two years till 31st December, 2008. The contract was terminated by the respondents. The petitioner raise disputes and wrote a letter on 12th November, 2007. It is not as if the respondents are saying that the petitioner has been holding discussions and that the process for mutually settling their disputes is continuing. About three months lapsed from the date of issuance of letter. In these circumstances, the arguments raised that the letter dated 12th November, 2007 cannot be construed as an invocation of the arbitration clause is unmerited. If the respondents genuinely felt that the petitioner's disputes should have been resolved, nothing prevented them from calling them and holding discussion. No such letter or Minutes of discussions were disclosed in these proceedings. Therefore, the chance given to the respondent to resolve the differences must be deemed exhausted. similarly, it was not necessary--nor does the arbitration clause require issuance of yet another, or second notice for arbitration. Learned counsel for the respondents had taken exception of personal allegations contained in the petition against certain Doctors. Having regard to the nature of the proceedings i.e. for appointment of an arbitrator, such averments are un-called for. Accordingly, those personal allegations are hereby directed to be struck off.

6. In view of the peculiar circumstances of the case since the interpretation of Clause 21, required and the attendant circumstances, the appropriate course in the view of the Court would be to permit the competent authority to nominate the Arbitrator. Accordingly, the Secretary (Law, Justice and Legislative Affairs), Government of NCT of Delhi shall nominate an Arbitrator within two weeks. An

intimation in that regard shall be directly addressed to the petitioner. It is open to the petitioner to raise all their contentions before the Arbitrator.

7. Nothing stated in this order shall preclude the parties including the petitioner from raising all the pleas including the allegations against individuals, in accordance with law.

8. The petition is allowed in the above terms.

Order Dasti.

S. RAVINDRA BHAT,J

FEBRUARY 28, 2008

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