

(UNREPORTABLE)

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

+ Arb.P.No.18/2008

% Date of Decision: March 07, 2008

AIDS Healthcare Foundation-India Cares,
..... Petitioner

! Through: Mr. Avijit Bhattacharjee with Mr.
Saumya Kundu, Advocates

Versus

\$ Secretary, Department of Legal Affairs, & Others
.....Respondents

^ Through: Mr. Suresh Kait with Mr. Yogesh
Verma, Advocates

CORAM:-

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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?

S.N.AGGARWAL, J (ORAL)

This is a petition filed by the petitioner against the respondents seeking appointment of an arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996.

Mr. Kait the learned counsel appearing on behalf of respondents has consented to the appointment of an arbitrator for adjudication of disputes referred in para 14 at page 11 of the petition.

The petitioner is an NGO which is stated to have done commendable work in prevention and treatment of AIDS. The petitioner had entered into an agreement described as MOU on 04.12.2006 with National Aids Control Organization, Department of Health, Ministry of National Health and Welfare through President of India. The agreement between the parties cites various activities and obligations to be undertaken by them. The agreement between the parties also contains an arbitration clause being Clause VIII which is reproduced herein-below:-

“VIII. SETTLEMENT OF DISPUTES

1) Any dispute or difference or question arising at any time between the parties hereto arising out of or in connection with or in relation to this Agreement shall be referred by arbitration under the provisions of the Arbitration and be referred to and settled by arbitration under the provisions of the Arbitration and Conciliation Act, 1996 or any modification or replacement thereof as applicable for the time being in India.

2) The arbitration shall be referred to an arbitrator nominated by Secretary Department of Legal Affairs, Ministry of Law and Justice, Govt. Of India, Delhi. The Arbitrator may, if he so feels necessary, seek opinion of any health care personnel with experience of working in the field of HIV and

care and treatment of PLHAs.

3) The place of arbitration shall be either New Delhi or the site of the collaborative ART project, which shall be decided by the arbitral tribunal bearing in mind the convenience of the parties.

4) The decision of the arbitrator shall be final and binding on both the parties.”

The respondents have terminated the agreement of the petitioner vide communication dated 26.10.2007. The termination has already taken effect w.e.f. 01.02.2008. The petitioner seeks to challenge the legality and validity of the termination of the agreement. The dispute regarding legality and validity of termination is duly covered by the arbitration clause in the agreement between the parties and therefore Mr. Kait appearing on behalf of the respondents has submitted that liberty be granted to the Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India to make appointment of an arbitrator in terms of arbitration agreement between the parties. To this, Mr. Avijit Bhattacharjee appearing on behalf of the petitioner has no objection.

In view of the above, this petition is allowed. Respondent No. 1 is directed to appoint an arbitrator in terms of arbitration agreement between the parties under intimation to the petitioner within four weeks from today for adjudication of disputes that have arisen between the parties under the above

referred contract.

The petition stands disposed of accordingly. The parties are left to bear their own costs.

IA No. 477/2008 (under Section 9 of the Arbitration and Conciliation Act, 1996) in Arb. P No. 18/2008

In view of the order passed in the main petition, this application is not pressed by the counsel appearing on behalf of the petitioner.

This application is, therefore, dismissed as not pressed.

March 07 , 2008
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S.N.AGGARWAL
[JUDGE]