

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

% *Judgment delivered on: February 18, 2013*

+ OMP No.957/2012, I.A.Nos.1321/2013, 521/2013 & 22849/2012

KARE PARTNERS GROUP INDIA PVT LTD & ANR

..... Petitioners

**Through Mr.Rajiv Bansal, Adv. with
Ms.Manjula & Mr.Joseph, Adv.**

versus

DR.AKHIL BHARGAVA & ORS

..... Respondents

Through Mr.Rakesh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioners, namely, Kare Partners Group India Pvt. Ltd. and Dr.Aditya Khindaria have filed the abovementioned petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking various reliefs as mentioned in para 10 of the petition.

2. Brief facts are that in September-October, 2011, the petitioner No.1, a healthcare group based out of USA began negotiations to acquire the 100% stake of Kamesh Bhargava Hospitals and Research Centre Pvt. Ltd. (Silver Oaks Hospital). On 21st February, 2012 the petitioners through their Indian subsidiary entered into several agreements with the respondents and the other selling shareholders relating to the acquisition of 51% shares of the shareholders captured in the Share Purchase Agreement, the Shareholders' Agreement, Share Subscription Agreement, Consultancy Agreements, and other documents executed in pursuance thereof ('Transaction Documents').

Petitioner No.1 agreed to acquire the balance 49% shareholding of the shareholders of the Hospital in 3 tranches.

3. The case of the petitioners is that the respondents defaulted in their obligations under the pre-closing and post-closing covenants as specified in the Transaction Documents, during the period of July-August, 2012. They also failed to cure the defaults despite of notice dated 27th September, 2012 issued by the petitioners wherein the petitioners invoked the arbitration clause for appointment of a sole Arbitrator.

In order to frustrate the dispute resolution mechanism and the arbitration process, the respondents prevented the petitioner-Company from pursuing its remedy. The respondent No.1 also failed to convene any Board Meeting resulting in issuance of notice dated 1st October, 2012 by petitioner No.2 calling for a Board Meeting on 19th October, 2012. On receipt of the Board Meeting notice, respondent No.1 issued a letter dated 2nd October, 2012 to the representatives of petitioner No.1 whereby respondent No.1 directed them not to enter the Hospital and also threatened action against them.

4. The petitioners left with no option but to file the present petition which was listed first time before Court on 9th October, 2012 when the notice was issued to the respondents for 9th November, 2012. It was also ordered on that date that the respondents would produce complete statements of all their bank accounts for the last three years before the next date.

5. The petitioners after issuance of the said notice filed the application being I.A.No.19286/2012 seeking certain directions. Notice of the same was accepted by the learned counsel for the respondents who made the statement on 17th October, 2012 that no action has been taken by the

respondents and would also not be taken till further orders of this Court to alienate or dispose of the properties belonging to Kamesh Bhargava Hospitals and Research Centre Pvt. Ltd. In view of the said statement, petitioner No.2 withdrew the notice of holding the Board Meeting for 19th October, 2012. By order dated 9th November, 2012 in the above said application, the interim order was passed that the respondents would not convene any Board Meeting which has participation of the two Addl. Directors, who were inducted pursuant to the decision taken at the Board Meeting held on 12th September, 2012. It was also ordered that the earlier interim order passed on 17th October, 2012 would also continue. The direction was also issued that any increase in shareholding of individual shareholders of Kamesh Bhargava Hospitals and Research Centre Pvt. Ltd. would be subject to further orders passed by this Court. However, the order would not preclude the parties from resolving their disputes through mutual negotiations.

6. Two more applications were filed by the petitioners, being I.A.Nos.22235/2012 & 22236/2012 for certain directions as well as for appointment of a Local Commissioner. By order dated 12th December, 2012, the direction was issued that neither party would issue any notice for any Board Meeting till further orders passed by this Court and the matter was adjourned to 14th January, 2013 for further hearing.

7. In the meanwhile, another application being I.A.No.22849/2012 was filed by the petitioners for directions which came up before Court on 19th December, 2012. Despite service of advance copy of the application, none appeared on behalf of the respondents, therefore, notice was again issued for 14th January, 2013. However, on that date, i.e. 19th December, 2012 after having heard the learned counsel for the petitioners, the interim

order was passed that till the next date, the decisions of the purported Board Meetings of Kamesh Bhargava Hospitals and Research Centre Pvt. Ltd. held on 13th September, 2012 and 29th September, 2012 and the General Body Meeting held on 26th September, 2012 would not be given effect to.

8. It appears from the record that the order dated 19th December, 2012 was challenged by the respondents by filing of the appeal being FAO(OS) No.19/2013 which was later on not pressed by the respondents for the reason that they will seek vacation of the impugned order before the Single Judge. Simultaneously, the petitioners also filed another application being I.A.No.521/2013 seeking directions for initiating proceedings under Section 340 Cr.P.C. against the respondents. The said application was taken up on 14th January, 2013 when the order of the Division Bench was pointed out by the learned counsel for the respondents and submitted that he would be filing an appropriate application in terms of the order, for vacation of the order passed on 19th December, 2012.

9. On 29th January, 2013, the application filed by the respondents was listed before the Court, being I.A.No.1321/2013 and the matter was adjourned to 1st February, 2013 for awaiting the reply thereto. On 1st February, 2013 after some hearing on the application filed by the respondents, the matter was adjourned to 12th February, 2013 and the parties were also given more chance to settle their disputes as agreed by them. However, when the matter was listed on that date, it was informed by the learned counsel for the parties that the matter be adjourned for short date. The matter was adjourned to 18th February, 2013 for seeking instructions from their respective clients.

10. On 18th February, 2013, it has been informed by the parties that despite of efforts made by the parties, the settlement could not be arrived.

Learned counsel appearing on behalf of the respondents states that since he has already addressed the submission in his application being I.A.No.1321/2013 on the last date let the order be passed, however, he did not oppose the request of the petitioners' counsel to consider other pending applications by the sole Arbitrator.

11. The main argument of the counsel for the respondents is that the directions issued by virtue of the order dated 19th December, 2012 that the decisions of the purported Board Meetings held on 13th September, 2012 and 29th September, 2012 and the General Body Meeting held on 26th September, 2012 would not be given effect to, were within the knowledge of the petitioners when they sought the similar prayer in earlier applications filed by them but the said interim order was not passed. There was no occasion for the petitioners to seek same relief by filing of subsequent application which was granted at the instance of petitioners by abusing the process on law. In a nut-shell, his submission is that the similar prayers could not have been granted once it was sought, but, not granted at the back of the respondents.

12. After having considered the rival submissions of both the parties, I am of the view that the interim order passed by the Court on 19th December, 2012 is not liable to be vacated, for the following reasons:-

- (a) Before filing of the application being I.A.No.22849/2012 in which the said interim order was passed, copy of the application was served to the respondents through counsel but no one appeared when the matter was listed.
- (b) The interim order as passed on 19th December, 2012 was passed by the same court who was seized of the matter and passed earlier interim orders from time to time.

- (c) In the application being I.A.No.22849/2012, certain additional facts are mentioned by the petitioners. It is evident from the record that while passing the impugned order the Court was aware about the earlier orders, thus, the interim order as passed on 19th December, 2012 cannot be vacated.

13. I have also been informed by the learned counsels for the parties that in this matter, Justice Mukul Mudgal, former Chief Justice of Punjab & Haryana High Court, has been appointed as a sole Arbitrator who is seized of the disputes between the parties. Considering the overall facts and circumstances of the case, the present petition filed by the petitioners is disposed of, by issuing the following directions:-

- (i) All the interim orders already passed on 17th October, 2012, 9th November, 2012, 12th December, 2012 and 19th December, 2012 shall continue till the time any order/orders including the order dated 19th December, 2012 are modified or vacated by the learned sole Arbitrator.
- (ii) Pleadings in all the pending applications in which the interim orders have been passed, would be filed by the petitioners before the learned sole Arbitrator within one week from the date of receipt of this order. The learned sole Arbitrator would decide any of the interim applications if pressed by either of the parties.

14. Copies of this order be given *dasti* to the learned counsels for the parties. A copy of the order be also communicated to the learned sole Arbitrator.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 18, 2013/ka