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

+ **ARB.P. 752/2020**

DR. SANJAY SINGH NEGI Petitioner
Through: **Mr.Aritra Das, Adv.**

versus

**DAYANAND MEDICAL COLLEGE AND HOSPITAL
MANAGING SOCIETY** Respondent
Through: **Ms.Suruchi Suri, Adv.**

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

% **08.04.2021**

1. This is a petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 ("the 1996 Act"), for appointment of an arbitrator to arbitrate on the disputes between the parties.

2. The petitioner is a liver transplant surgeon, who was engaged by the respondent *vide* letter of engagement dated 31st January, 2020, which constitutes the contract between the petitioner and the respondent in the present case, and which contains the following arbitration clause:

"21. That in case of any difference of opinion or dispute (financial or otherwise) touching your professional fee or engagement norms and conditions in this institution or

regarding any of the terms and conditions of the letter of engagement, the said dispute shall always be referred to the Arbitration Committee consisting of the Secretary, DMCH Managing Society, Principal, Medical Superintendent and one the Senior Faculty Member, whose decision shall be final and binding on you.”

3. The substance of the dispute between the petitioner and the respondent is set out in the following passages, from the present petition:

“7.8 The Petitioner was once again orally assured and promised for minimum six Liver Transplant Surgeries at the time of issuance of the said engagement letter, for which he would earn Rs. 15,00,000/- per month @ Rs. 2,50,000/-. The Petitioner, as required, registered himself with the Punjab Medical Council on 06.03.2020, and went out of his way to fast-track the process by process by procuring NOC from Delhi Medical Council within 3 days, despite the fact that it takes at least 2 weeks to get NOC. The NOC from Delhi Medical Council dated 05.03.2020 and Petitioner's registration certificate from Punjab Medical Council dated 06.03.2020 and are annexed herewith respectively as **Document P-4** and **Document P-5**.

7.9 The Petitioner regularly attended his duties since the time of his joining i.e. 02.03.2020, despite the COVID-19 pandemic and subsequent lockdown and sealing of the Department of Liver Transplant during the lockdown phase and continued to attend his duties in hospital by sitting in Operation Theatre or OPD, seeing patients in OPD and performing surgeries. conducted surgeries in General OPD as per orders dated 03.03.2020 and later 12.06.2020 and apart from this Private OPDs were conducted every day except Sunday. Further, the Petitioner was supposed to be on call 24 hrs a day for any patient new or admitted. In addition to this the Petitioner also supervised a seminar with the topic 'ca breast' allotted to resident Dr.Rochan Mangla on 09.07.2020

and a case presentation by Resident, Dr. Parvantandeep Singh and 07.09.2020. The Petitioner's signatures on the attendance register since 02.03.2020 along with list of holidays are collectively annexed herewith and marked as **Document P-6 (COLLY.)**. Respondent's orders dated 03.03.2020 and 12.06.2020 with General OPD schedules are annexed herewith and respectively marked as **Document P-7** and **Document P-8**. Records of GI and hepatobiliary surgeries done by the Petitioner are collectively annexed herewith and marked as **Document P-9**. Teaching Schedules dated 26.06.2020 and 27.08.2020 are annexed herewith and respectively marked as **Document P-10** and **Document P-11**.

7.10 Contrary to the initial assurances and promises and despite expiry of four months of the Petitioner's joining, the Respondent with nefarious designs and malafide intentions, willfully never applied with the concerned Government Department for procuring renewal of Liver Transplant Licence, nor procured the required equipment / instruments nor it recruited consultant / resident doctors. The Petitioner could not perform Liver Transplant Surgeries despite certain patients seen by him requiring liver transplant. List of patients seen by the Petitioner at the Respondent's hospital highlighting patients requiring liver transplants is annexed herewith and marked as **Document P-12**.

7.11 The Petitioner was attending OPD, seeing all patient referrals / consultations in general / private OPD, doing marketing activities of the Department despite lockdown and performing complex hepato-biliary surgeries during this entire period. The Respondent, by adopting such modus operandi, constrained and compelled the Petitioner to not only do the work of a resident but also conduct complex hepato-biliary surgeries alone only with nurses.

7.12 Since April 2020, the Respondent even stopped paying the guaranteed monthly professional fee of Rs. 6 lacs without any valid cause and reason, despite the fact that the Petitioner left his previous secured, well paying and stable job at Delhi. The Petitioner shifted his base to Ludhiana completely along with his family believing the promises made by the

Respondent, as aforesaid. As a direct consequence of the dishonest, fraudulent and illegal acts of omission and commission on the part of the Respondent, the Petitioner is under extreme financial hardship and mental agony. True copy of the Petitioner's passbook is enclosed herewith as **Document P-13.**

7.13 Further, the Respondent in a manner similar to aforesaid, hasn't been paying the salary to the Petitioner's OT Manager, Mr. Ranjeet Singh, who had joined the Respondent at the behest of the Petitioner. The Respondent also declined for extension of his term of appointment expiring on 01.09.2020. Mr. Ranjeet Singh's letter dated 14.08.2020 to the Respondent regarding non-payment of his salary is annexed herewith and marked as **Document P-14.**

7.14 It is thus apparent that right from the beginning, the Respondent had dishonest and fraudulent intentions and in furtherance of the same, the Respondent in active connivance and conspiracy with each other induced and enticed the Petitioner to leave his secured job and secured monthly earning to the tune of Rs. 22 lacs to join the Respondent on false promises thereby causing wrongful gain to the Respondent and corresponding wrongful loss to the Petitioner.”

Needless to say, while setting out the dispute as raised by the petitioner in this petition, the right of the respondent to refute the allegations contained in the aforesaid paragraphs, or to prefer any claims against the petitioner, would stand reserved.

4. The petition asserts that the petitioner had written to the respondent, invoking Clause 21 of the contract (*supra*), for reference of the aforesaid disputes to arbitration. The respondent, too, *vide* its letter dated 11th November, 2020 addressed to the petitioner, invoked the aforesaid clause.

5. Citing the decision of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*¹, *Bharat Broadband Network Ltd. v. United Telecoms Ltd.*² and *TRF Limited v. Energo Engineering Projects Ltd.*³ as well as a judgment of this Court in *Proddatur Cable TV Digi Services v. Siti Cable Network Ltd.*⁴ to the effect that “one sided” arbitration clauses, which permit one of the parties to the agreement to act as arbitrator or to nominate the arbitral tribunal, cannot be enforced in law, learned Counsel for the petitioner submits that the task of appointing an arbitrator would fall on this Court under Section 11(6) of the 1996 Act; ergo, this petition.

6. A reply has been filed, by the respondent, to the present petition, in which the respondent has objected to the territorial jurisdiction of this Court to entertain the present petition. It is sought to be contended that the “intention of the parties” was that the arbitration would take place at Ludhiana which would, therefore, be the seat of arbitration and that, therefore, this petition would appropriately lie before the High Court of Punjab and Haryana.

7. Ms. Suruchi Suri, learned Counsel for the respondent, candidly acknowledges that there is no express clause in the agreement between the parties, fixing the seat of arbitration as Ludhiana. Nor is there any provision which even designates Ludhiana as the venue of the arbitral proceedings.

¹ 2019 SCC OnLine SC 1517

² (2019) 5 SCC 755

³ (2017) 8 SCC 377

⁴ 2020 SCC OnLine Del 350

8. In view thereof, it is obviously impossible for me to accept the submission of Ms. Suri that Ludhiana was intended to be the seat of arbitration proceedings and that, therefore, this Court has no jurisdiction. The said objection is, therefore, rejected.

9. Ms. Suri further submits that, as the arbitration clause, in the agreement between the parties, contemplates an arbitral panel of three arbitrators, the petitioner could not unilaterally seek modification of the clause and reference of the disputes to a sole arbitrator. This argument, too, in my view, is without substance, as the arbitration clause is rendered inoperable in view of the judgments of the Supreme Court in *Perkins Eastman*¹ and other decisions cited hereinabove. As such, it is not open to either party to rely on the said clause, insofar as the composition of the arbitral tribunal is concerned.

10. No other serious objection to appointment of the arbitrator having been raised by the respondent, I am of the opinion that the prayer for appointment of the arbitrator by the Court must necessarily succeed.

11. Ms. Suruchi Suri requested that the arbitrator could be someone stationed in Ludhiana, but learned Counsel for the petitioner has opposed the said request. In any event, as learned Counsel for the petitioner correctly points out, it would always be open to the arbitrator appointed by the Court to consider the prayer of the respondent for holding of the arbitration at Ludhiana, if such a request

is made and, therefore, I do not propose to express any opinion in that regard, leaving it open to the arbitrator to take a decision on a request being made before him to that effect.

12. The amount in dispute is stated to be in the vicinity of around ₹ 29 crores, of which about ₹ 1.55 crores would be the amount claimed by the petitioner and ₹ 27 crores is the amount which the respondent seeks to urge in counter claims.

13. In view thereof, I appoint Hon'ble Ms. Justice Indu Malhotra (Mob. No.9810026757 and Email ID: indu.malhotra@gmail.com), an eminent retired Judge of the Supreme Court, as the Arbitrator to arbitrate on the disputes between the parties. The learned Arbitrator may fix her fees as per the Fourth Schedule to the 1996 Act or otherwise in consultation with the parties.

14. The learned Arbitrator is also requested to furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference. It would be open to the learned Arbitrator to consider the prayer, of either side as made before her, for fixing any particular place as the venue for holding the arbitral proceedings.

15. The right of the respondent to prefer counter-claims before the learned Arbitrator, in accordance with law, remains reserved.

16. With the aforesaid observations, this petition stands disposed of.

C.HARI SHANKAR, J

APRIL 8, 2021/kr

