

\$~42

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

+ **FAO(OS) (COMM) 9/2016**

HOUSE OF DIAGNOSTICS LLP & ANR

..... Appellants

Through : Mr Sandeep Sethi, Senior Advocate with
Mr Neeraj Yadav and Mr Sidharth Arora,
Advocates.

versus

ESAOTE ASIA PACIFIC DIAGNOSTIC PRIVATE
LIMITED & ORS.

.... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **18.03.2016**

CM No.10435/2016(exemption)

Exemption is allowed, subject to all just exceptions.

FAO(OS) (COMM) 9/2016 & CM No.10434/2016(stay), Caveat 267/2016

This is an appeal against an order passed by the learned Single Judge on 17.03.2016 in OMP (I)(COMM) No.81/2016 which, in turn, was an application under Section 9 of the Arbitration & Conciliation Act, 1996 seeking an injunction against the Letter of Credit, which was issued on 19.01.2012 by the respondent No.3 at the instance of the appellant in favour of the respondent No.1.

The Letter of Credit was issued in respect of the purchase of three MRI machines and two ultrasound machines from the respondent No.1. The machines have been received by the appellant in 2012 and 2013 and have been in use.

The Letter of Credit is due for encashment on 19.03.2016. There is no allegation of fraud on the part of the respondent No.1 at the time of issuance of the Letter of Credit and, therefore, there cannot be any injunction against the Letter of Credit. It is the contention of the learned counsel for the appellants that there are discrepancies in the documents and the Bank ought to be enjoined from allowing the Letter of Credit to be encashed by the respondent No.1.

If there is a wrongful encashment of the Letter of Credit, it is always open to a party (such as the appellants in this case) to take appropriate proceedings in law. Certain issues with regard to the quality of the machines were also sought to be raised. However, the underlying contract cannot be brought into the picture while considering the issue of encashment of a Letter of Credit.

The learned Single Judge has not granted the injunction and we see no reason as to why we should interfere with that exercise of discretion.

The appeal is dismissed.

Dasti under signatures of the Court Master.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MARCH 18, 2016

‘sn’