IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L) NO.438 OF 2017

Metropolis Healthcare Limited ....Petitioner

Vs.

Dr. Ajit S. Golwilkar and Ors. ....Respondents

Dr. Birendra Saraf a/w. Mr. Yakshay Chedda and Ms. Pooja Tated i/b. ALMT Legal for petitioner.
Mr. Chirag Mody a/w. Mr. Jatin Pore and Mr. S. Shah i/b. M/s. DSK Legal for respondent nos.1,3 and 4.
Ms. Pooja Tated for respondent no.2.

CORAM : K.R.SHRIRAM, J.
DATE : 10th OCTOBER, 2017

P.C.:

1 Dr. Saraf and Mr. Mody state that parties have come to a workable arrangement in this arbitration petition and tender minutes of the order dated 10th October, 2017 signed by the Advocates on record, which is taken on record and marked 'X' for identification. The minutes of the order reads as under :

> 1. It is hereby directed that:
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> a. Walker Chandiok & CO LLP (firm registration No. 001076 N/N 500013) ("Valuer") be and is hereby appointed as an expert to determine the Fair Value of the 3000 Shares(to be determined as per the Schedule 8 of the SHA) collectively held by Respondent No.1, Respondent No.3 and Respondent No.4 (jointly "Dr. Golwilkar"), ("Offer Shares") in respect of which Dr. Golwilkar has issued Sale Notice pursuant to clause 5.2 (a) of the Share Holders' Agreement dated 14thOctober, 2005 ("SHA")
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> b. The Parties shall, promptly and in any event within 3 business days of request being made by the Valuer, render

such assistance and provide such information / documents as may be required by the Valuer for the purpose of determination of the Fair Value. The Valuer shall determine the Fair Value as per Schedule 8 of the SHA. The Valuer shall determine the Fair Value at the earliest and in any event not later than 21 business days hereof. The Fair Value so determined by the Valuer shall be final and binding on the Parties.

c. Within 30 business days of determination of the Fair Value, ("Acceptance Period") Metropolis Healthcare Limited (formerly known as Metropolis Health Services (India) Private Limited) ("the Petitioner") shall intimate to Dr. Golwilkar in writing ("Acceptance Notice") whether it intends to purchase the Offer Shares for the Fair Value as determined by the Valuer ("Consideration Amount").

d. In the event the Petitioner sends Acceptance Notice within Acceptance Period as aforesaid, the Consideration Amount shall be paid without any deductions, adjustment or set off of any nature whatsoever, by the Petitioner not later than 60 business days thereof, to Respondent No.1, Respondent No.3 and Respondent No.4, in equal shares, i.e. 1/3rd each respectively by direct remittance to their respective Bank Accounts mentioned below:

a. Dr. Ajit Shankar Golwilkar
Bank: Bank of India
A/c No.:050310100025548
IFSC Code: BKID 0000503
MICR Code: 411013011

b. Dr. Awanti Tushar Mehendale
Bank: ICICI Bank
A/c No. : 646101503157
IFSC Code: ICIC 0006461
MICR Code: 411229021

c. Dr. Vinanti Nikhil Patankar
Bank: ICICI Bank
A/c No.: 003901597586
IFSC Code: ICIC 0000039
MICR Code: 411229003

e. Simultaneously upon receipt of the Consideration Amount, Dr. Golwilkar shall transfer the respective shares held by them to the Petitioner. The purchase and transfer of the Offer Shares shall be completed on the terms mentioned in Clause 6below.

f. There will be no requirement for any Sale Notice.

2. In the event Dr. Golwilkar does not receive the Acceptance Notice within the Acceptance Period, the rights of the Petitioner to purchase the Offer Shares shall cease and Dr. Golwilkar shall be absolutely free to transfer the Offer Shares to any third Party as per Article 5.2 of the SHA.

3. In the event, prior to expiry of the Acceptance Period the Petitioner has issued the Event of Default Notice, the following provisions shall apply in relation to payment of Consideration Amount.

- At the time of completion of purchase and sale of the Offer Shares: 75% of the Consideration Amount shall be paid by the Petitioner to Dr. Golwilkar and 25% of the Consideration Amount ("Escrow Amount") shall be deposited in an interest bearing escrow account opened with HDFC Bank or ICICI bank. The escrow amount shall be released as per the directions of the Arbitral Tribunal (defined below). It is agreed and undertaken that the Award shall be final and binding between the Parties and it is clarified that the monies shall be released from the escrow account, if so directed by the Arbitral Tribunal, even if any party has challenged the said award.

- Event of Default notice sent after expiry of the Acceptance Period or after refusal to purchase the Offer Shares by the Petitioner shall not affect the rights/ entitlement of Dr. Golwilkar to transfer of the Offer Shares to a third party and the claims if any of the Petitioner in such an event shall be only monetary claims.

4. The monetary disputes/ claims and all disputes relating to other rights, if any, inter se between the Parties shall be referred to arbitration as per schedule 13.1 (b) of the SHA (without any requirement for amicable discussions prior to

invocation of arbitration), provided however the arbitral tribunal shall comprise of a sole arbitrator as mutually appointed by the Petitioner and Respondent No.2 on one hand and the Respondent Nos. 1, 3 and 4 on the other hand ("Arbitral Tribunal"). It is clarified that the valuation as determined by the Valuer being final and binding, the Parties shall not be entitled to dispute the same or the transfer of the Offer Shares.

5. Pendency of any claims / disputes before the Arbitral Tribunal shall not in any manner affect or invalidate the transfer of the Offer Shares by Dr. Golwilkar.

Further, in the event the Petitioner fails to make payment of the Consideration Amount and/or complete the Transfer formalities after having issued the Acceptance Notice, then without prejudice to other remedies available to Dr. Golwilkar in law or in equity or under these terms, the non-compete obligations under the SHA against Dr. Golwilkar shall cease to be effective with immediate effect and they shall be absolutely free to carry on any business, profession competing or conflicting with the Company.

6. The Purchase and transfer of the Offer Shares shall be consummated on the following terms:

a. The Stamp duty payable on documents relating to transfer of Offer Shares shall be borne by the Petitioner on the one hand and the Respondent Nos. 1, 3 and 4 on the other hand equally.

b. The payment of Consideration Amount for the Offer Shares shall be made by bank transfer in a single tranche,; unless the provisions of clause 3 above applies, in which event the Escrow Amount will be released as per provisions of the said clause 3;

c. Dr. Golwilkar shall handover original share certificates and the transfer forms in relation to the Offer Shares to Petitioner simultaneously on receipt of payment of Consideration Amount as per clause 1 or 75 % of Consideration Amount as per clause 3 above.

d. The modalities and compliances for giving effect to the transfer of Offer Shares shall be completed by the Petitioner and Dr. Golwilkar shall provide reasonable assistance in this regard, as may be necessary as per applicable law;

e. In relation to the transfer of Offer Shares, Dr. Golwilkar severally and on their respective account, represent as follows:

i. Each of Dr. Golwilkar owns 1,000 (One Thousand) equity shares of the Respondent No.2 collectively constituting 30 (thirty) percent of the issued, subscribed and paid-up capital of Respondent No.2.

ii. Each of Dr. Golwilkar is the sole and exclusive legal and beneficial owners of the Sale Shares. The Offer Shares are free and clear of third party encumbrances, except as provided under the SHA;

iii. Each of Dr. Golwilkar has the right and power to transfer the Offer Shares to Petitioner as per terms of SHA;

iv. Upon transfer of Offer Shares to the Petitioner, each of Dr. Golwilkar will submit their respective resignations as Directors of Respondent No. 2 Company and sign any other document / form, if statutorily required, to effectuate the resignation.

f. Petitioner represents that it has the requisite power, capacity and authority to consummate the transfer of Offer Shares as is contemplated herein.

7. The time mentioned herein is of the essence. Further, in the event, of any of the parties failing to perform its obligations hereunder, the other parties shall be entitled to take out the execution proceedings.

8. Till transfer of Shares by Respondent Nos 1, 3 and 4, all the parties shall continue to be bound by and shall comply with the working understanding followed till date and the terms and conditions of the SHA in relation to the management, business and operations of Respondent No 2 in the interest of Respondent no. 2.

9. The SHA shall be read along with the terms mentioned herein and in case of conflict between the provisions of SHA and the terms mentioned herein, the terms mentioned herein shall prevail.

2 Order in terms of minutes of the order. All undertakings are accepted and so ordered. Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)