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

+ ARB.P. 415/2017

KAILASH HOSPITAL & HEART INSTITUTE Petitioner

Through: Mr. Ramnesh Jerath & Ms. Taru
Gupta, Advocate

versus

MINISTRAY OF HEALTH & FAMILY WELFARE ,THROUGH
THE DIRECTOR CGHS Respondent

Through: Mr. Rajesh Kumar & Ms. Santwana
Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **13.09.2017**

1. This petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) for appointment of the sole arbitrator.
2. Some of the relevant facts are that the petitioner and the respondent had entered into an agreement dated 22.9.2010 for providing of treatment facilities and diagnostic facilities to the Central Government employees/pensioners in the petitioner hospital.
3. It is the case of the petitioner that during the course of discharge of respective obligations, the respondent no.1 reduced the rates of some of the medical procedures.
4. The petitioner on 9.7.2015 filed a writ petition before this Court being WP (C) No. 1538/2013 for quashing of the said unsustainable reduction in rates. The writ petition was disposed of on 9.7.2015 holding that the petitioner may make its claims before the respondent which would be

considered by the respondent. Liberty was granted to the petitioner that in case of any grievance of the parties, the petitioner would be entitled to invoke the agreed dispute resolution mechanism. The petitioner has thereafter on 26.12.2016 invoked the arbitration clause and sought appointment of the sole arbitrator in terms of the arbitration clause. A reminder has also been sent on 8.3.2017.

5. This matter was heard on 7.7.2017 when learned counsel for the respondent who entered appearance accepted notice and sought time to take instructions. The matter was adjourned to 8.8.2017. On that date, the learned counsel for the respondent came back with the instructions and took time to file the reply. Two week's time was granted to file the reply and the matter was adjourned for today.

6. Today also, no reply has been filed and it is urged that some more time may be given for filing the reply. There are no grounds made out for extending the time for filing the reply, in the facts and circumstances of the present case.

7. Clause 24 of the Agreement dated 22.9.2010 is an arbitration clause, which reads as follows :-

“24. Arbitration.

“if any dispute or difference of any kind whatsoever (the decision whereof is not herein otherwise provided for) shall arise between the CGHS and the Hospital upon or in relation to or in connection with or arising out of the Agreement, shall be referred to for arbitrator by the Director General Health Services, Ministry of Health & FW, Government of India, who shall give written award of his decision to the parties. The decision of the Director General of Health Services shall be final and binding. The provision of the Arbitration and Conciliation Act, 1996

shall apply to the arbitration proceedings. The venue of the arbitration proceedings shall be at Delhi/New Delhi.”

8. Hence, in terms of the above clause, the Director General Health Services, Ministry of Health & Family Welfare, Government of India is the named arbitrator to adjudicate the disputes between the parties. Despite invocation of the arbitration clause on 26.12.2016 by the petitioner and a reminder on 8.3.2017, no steps have been taken by the respondents to appoint the arbitrator.

9. In view of the judgment of the Supreme Court in ***Datar Switchgears vs. Tata Finance Ltd., (2000) 8 SCC 151*** the respondent has lost its right to appoint an arbitrator in the case.

10. I may point out that the named arbitrator in the arbitration clause even otherwise cannot be appointed in view of Section 12 (5) read with 7th Schedule of the Act.

11. Keeping in view the above facts, I appoint Shri Rakesh Sidharth (Mobile No.9910384655) as the sole arbitrator to adjudicate the disputes between the parties. He will act under the newly amended Arbitration and Conciliation Act, 2006. The arbitration proceedings will take place under the aegis of the Delhi International Arbitration Centre (DIAC). A copy of this order be sent to DIAC and the learned Arbitrator.

12. The petition stands disposed of. All pending applications, if any, also stand disposed of.

13. Dasti.

JAYANT NATH, J.

SEPTEMBER 13, 2017/P