

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPLICATION NO. 06 OF 2018

M/S. VIGNAHARTA HEALTH VISIONARIES PRIVATE LIMITED
VERSUS
DR. YOGESH BALIRAM VARGANTWAR

Advocate for Applicant : Mr. Rahul Totala h/f. Mr. R.A. Karwa.
Advocate for Respondent : Mr. S.G. Chapalgaonkar.

CORAM : RAVINDRA V. GHUGE, J.
DATE : 21st November, 2018

PER COURT :

1. The applicant relies upon the MOU dated 05th February, 2015, for seeking appointment of an Arbitrator. It is contended that clause 13 of the said MOU is specifically with relation to the jurisdiction for entertaining the dispute and causing arbitration within the jurisdiction of the Courts of Aurangabad city. It is mentioned that the appointment of an arbitrator would be by virtue of the said clause and in view of the provisions of the Arbitration and Conciliation Act, 1996.

2. Learned counsel for the respondent has strenuously opposed this application on the ground that this applicant had specifically denied the existence of the said MOU while responding to the notice of the respondent, vide reply dated 08/03/2018. It was specifically averred in paragraph No. 9 that the MOU dated 05/02/2015, is an invalid and

bogus document and is not binding on the present applicant. It is, further, averred in paragraph No. 11 that the demand notice of the respondent cannot be entertained as he is seeking the implementation of the arbitration clause set out in the MOU which is an invalid document. It is, further, submitted that the respondent has already approached the NCLT by preferring proceedings on 31/03/2018, and the appointment of an arbitrator should not be construed as being an impediment for the said proceedings. It is submitted that the applicant is now taking a different stand acknowledging the existence of the MOU only because the respondent has approached the NCLT.

3. Learned advocate for the applicant tenders an additional affidavit dated 21/11/2018, signed by the Managing Director of the applicant specifically declaring that the MOU dated 05/02/2015 is an arbitration agreement and it is a valid agreement. It binds the applicant as well as the respondent. The applicant now withdraws its stand that the MOU is an invalid document and shall never deny the legality of the MOU before any Court or Tribunal. The said affidavit is taken on record and marked as 'X' for identification.

4. Learned advocate for the applicant has suggested the name of Justice P.V. Hardas (former Judge of the High court of Bombay) as the Arbitrator. He is a resident of Aurangabad. Learned advocate for the

respondent consents, without prejudice to the proceedings pending before the NCLT.

5. In view of the above, this application is allowed and Shri Justice P.V. Hardas, is appointed as the Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. The litigating sides are at liberty to approach the learned Arbitrator independently and decide the terms for conducting the Arbitration proceedings, with the consent of the Arbitrator. Needless to state, the said arbitration proceedings would not be an impediment for the NCLT to decide the proceedings initiated by the respondent on its own merits as per law applicable .

(RAVINDRA V. GHUGE, J.)

S.P.C.