

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO.181 OF 2017**

Sodexo Food Solutions Pvt. Ltd. ... Applicant
versus
Cumballa Hill Hospital and Heart Institute ... Respondent

Ms. Khooshnum R. Daviervalva with Mr. Yazdi P. Jijina I/by M/s. Mulla and Mulla and Craigie Blunt and Caroe, for Applicant.
None for Respondent.

**CORAM: S.J. KATHAWALLA, J.
DATE: 24th AUGUST, 2018**

P.C.:

1. The Applicant – Sodexo Food Solutions Pvt. Ltd., has filed the above Arbitration Application against the Respondents under Section 11 of the Arbitration and Conciliation Act, 1996, as amended by Arbitration and Conciliation (Amendment) Act, 2015 (the Act) for appointment of Arbitrators to resolve the disputes that have arisen between the parties under the Food Services Agreement dated 6th November, 2012. (Exhibit “A” to the Application).
2. The Applicant is a Company registered under the Companies Act, 1956 and is in the business of providing catering and related services to various corporate bodies and hospitals. The Respondent is a Hospital registered under the Bombay Nursing Home Act, 1949 and is in the business of hospital health care.
3. According to the Applicant, the Respondent hospital was desirous of setting up canteen service and approached the Applicant for rendering catering services.

Accordingly, Food Services Agreement dated 6th November, 2012 was executed between the parties. Clause 18 of the said Agreement pertains to arbitration, which is reproduced hereunder :

“18. In the event of any dispute or difference between the parties hereto, whether arising during the currency or after the completion of this Agreement, or after the determination thereof (whether for breach or for any other reason) in regard to any matter or thing of whatsoever nature arising out of this Agreement or in/ connection therewith then such dispute or difference shall be settled in accordance with provisions of the Arbitration and Conciliation Act, 1996 or any modification or any succeeding Act. Each party shall appoint one Arbitrator and the two arbitrators so appointed shall appoint a third presiding arbitrator. The proceedings shall be conducted in English and held in Mumbai. The decision of the arbitrators shall be final and binding on the parties”.

4. Disputes arose between the parties, because of which the Applicant by their Advocate's letter dated 17th October, 2016 invoked the Arbitration Clause (paragraph 13 of the Notice). However, the Respondent did not respond to the same. The Applicant is therefore, constrained to file the above Arbitration Application seeking appointment of Arbitrators.

5. None appear for the Respondent though the Trustee of the Respondent has accepted service of the above Application on 2nd May, 2018. The Respondent has not

filed its Affidavit in Reply. The Respondent has also not nominated an Arbitrator. It is therefore clear that the Respondents have failed to appoint an Arbitrator to resolve their disputes. Hence, the following order :-

(i) Mr. Sarosh Bharucha, Advocate is appointed as nominee Arbitrator of the Applicant and Ms. Neeta Jain, Advocate is appointed as nominee Arbitrator of the Respondent to decide the disputes between the parties arising out of the Food Services Agreement dated 6th November, 2012.

(ii) The above two Arbitrators shall file their disclosures under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) within a period of one week from today.

(iii) Both the Arbitrators shall appoint a third/presiding Arbitrator in the matter to decide the disputes between the parties.

(iv) The learned Arbitrators shall not grant adjournments to the parties unless absolutely necessary.

(v) All contentions of the parties are kept open.

(vi) The cost of arbitration shall initially be borne by the parties equally.

(vii) The venue of Arbitration shall be at Mumbai.

(viii) In view of this order, the above Arbitration Application is disposed of.

(ix) A copy of this order shall be forwarded to the Trustee of the

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Respondent by hand delivery.

(S.J.KATHAWALLA, J.)

Swaroop
Sharad
Phadke

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by Swaroop
Sharad Phadke
Date:
2018.08.27
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