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

+ **ARB.P. 60/2018**

CLEARMEDI HEALTHCARE PVT LTD Petitioner
Through: Mr Puneet Bhardwaj, Advocate.

versus

VALENTIS CANCER CARE HOSPITAL PVT LTD Respondent
Through: Mr Sanchit Garg, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **08.03.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in respect of the agreement dated 01.07.2012 (hereafter 'the Agreement').

2. The Agreement includes an arbitration clause, which is set out below:-

“20.2 Any claim, controversy or dispute arising out of or in connection with this Agreement, not settled by mutual agreement of the Parties involved within 30 days after a Party is provided written notice for settlement thereof, shall be referred to arbitration to a sole arbitrator appointed in accordance with the provisions of the Indian Arbitration and Conciliation Act of 1996 Pending the arbitration proceedings, all disputed amount/ payments, shall be deposited in the custody of the arbitrator, appointed under this clause until the

completion of the arbitration proceedings. These disputed amounts/payments held by the arbitrator shall be paid to the Parties as per the provisions of the arbitration award after successful completion of the proceedings. The arbitration proceedings shall be conducted in Delhi, India and shall be governed by and construed in accordance with the laws of India. The language of the arbitration shall be English. The costs and expenses of the arbitrator(s) and holding the arbitration shall initially be borne in equal shares by the Hospital and Clearmedi. Each Party will bear its own legal, travelling and other similar costs. However, the arbitrator may in his award, require any Party to pay such costs as the arbitrator think fit, including the costs and expenses of the arbitration, travel, costs and advocates fees.”

3. The petitioner invoked the arbitration clause by a letter dated 16.11.2017 calling upon the respondent to agree on appointment of the arbitrator named in the said letter. In response to the aforesaid notice invoking the arbitration clause, the respondent sent a letter dated 07.12.2017 expressing its disagreement with the proposal to appoint the arbitrator named in the notice dated 16.11.2017. The respondent, in turn, suggested three other names and called upon the petitioner for appointing any one of them as an arbitrator. However, the petitioner is not agreeable to appointment of any of the said three persons as suggested by the respondent and, therefore, has filed the present petition.

4. In view of the above, it is apparent that there is no dispute as to the existence of the arbitration agreement (clause) and, therefore, a sole arbitrator is required to be appointed to adjudicate the disputes between the parties.

5. In view of the above, Ms. Justice Rekha Sharma, Retired. Judge, Delhi High Court, (Mobile No. 9871300025) is appointed as the sole arbitrator to adjudicate the disputes that have arisen between the parties in relation to the Agreement. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator shall fix his fees in consultation with the learned counsel for the parties.
6. The parties are at liberty to approach the arbitrator for further proceedings. It is clarified that all contentions of the parties are reserved.
7. The petition is disposed of in the aforesaid terms.

MARCH 08, 2018
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VIBHU BAKHRU, J