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

+ **ARB.P. 124/2018**

KMC HOSPITAL & RESEARCH CENTRE Petitioner

Through: Dr Vijendra Mahndiyan and Ms
Pallavi Awasthi, Advocates.

versus

CENTRAL ORGANISATION ECHS & ORS. Respondents

Through: Mr Vikram Jetly, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **21.02.2018**

I.A. 2220/2018

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. 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 petitioner and respondent no.2 in connection with a Memorandum of the Agreement dated 31.05.2016 (hereafter 'the Agreement').

4. The said agreement includes an arbitration clause, which reads as under:-

“28. Any dispute or difference whatsoever arising between the parties to this agreement out of or relating to the construction,

meaning, scope, operation or effect of this agreement or the validity of the breach thereof shall be referred to an arbitrator to be appointed by mutual consent of both parties herein. If the parties cannot agree on the appointment of the Arbitrator within a period of one month from notification by one party to the other of existence of such dispute, then the Arbitrator shall be nominated by the Secretary, Department of Legal Affairs, ministry of Law and justice. The provisions of the arbitration and conciliation Act 1996 will be applicable and the award made hereunder shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliations Act, 1996 or of any modifications, Rules or reenactments thereof. The Arbitration proceedings will be held at New Delhi.”

5. Since the petitioner had certain claims with regard to the Agreement, the petitioner sent a notice dated 23.08.2017, *inter alia*, calling upon the respondent no.2 to pay a total amount of ₹3,30,00,000/- with interest at the rate of 18% per annum (in all aggregating ₹3,89,40,000/-). The petitioner also put respondent no.2 to notice that if the said demand is not met, the petitioner would initiate appropriate “arbitration/civil proceedings” at the risk and cost of respondent no.2.

6. Respondent no.2 responded to the said notice disputing the allegations made by the petitioner. The petitioner claims that thereafter the petitioner sent a letter dated 14.11.2017 invoking the arbitration clause. However, the petitioner did not receive any response to the same. In terms of the arbitration clause, the petitioner also sent a letter dated 15.01.2018 to respondent no. 3 calling upon the said respondent to appoint an arbitrator. The petitioner states that it has also not received any response to the said letter.

7. In view of the above, this Court is of the view that an Arbitral Tribunal is required to be constituted to adjudicate the disputes that have arisen between the parties in connection with the Agreement. Accordingly, this Court appoints Mr Amit Bansal, Advocate (Mobile No. 9810072413) as the sole arbitrator to adjudicate the disputes that have arisen between the parties.

8. 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.

9. The arbitrator's fees shall be fixed in consultation with the counsel for the parties and having regard to the Schedule of fees as prescribed in the Fourth Schedule of the Act.

10. The parties are at liberty to approach the Arbitrator for further proceedings.

11. Order *dasti* under signature of Court Master.

FEBRUARY 21, 2018
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VIBHU BAKHRU, J