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

+ **ARB.P. 108/2018**

INNOVISION LIMITED

..... Petitioner

Through: Mr Chirag Jamwal and Mr Ajit Amar,
Advocates.

versus

SANJAY GANDHI MEMORIAL HOSPITAL Respondent

Through: Mr Gautam Narayan, ASC, GNCTD
with Mr R. A. Iyer, Mr Abhinav Gajal
and Mr Mahamaya Chatterjee,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **16.03.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') for appointment of an Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the agreement dated 07.06.2016 (hereafter 'the Agreement').

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

“57. That in case of any dispute between the First Party and the Second Party, the person appointed by Secretary (H&FW), Department of Health & Family Welfare, GNCT of Delhi shall be the arbitrator and cost of arbitration shall be borne by both parties equally.”

3. In view of the disputes that are stated to have arisen between the parties, the petitioner sent a notice dated 16.10.2017 invoking the arbitration clause.

4. The petitioner claims that the said notice elicited no response from the respondent.

5. The present petition was moved on 09.02.2018 before this Court, and the learned counsel for the respondent accepted notice and sought time to obtain instructions. The matter was, thereafter, listed on 12.02.2018 and on that date, it was submitted on behalf of the respondent that the respondent has suggested names of three persons to be appointed as an arbitrator and the Lieutenant Governor, NCT of Delhi has to take a decision in this regard.

6. Mr Gautam Narayan, the learned counsel appearing for the respondent submits that the file has been put up before the Lieutenant Governor and his decision is awaited. He submitted that there may be something amiss in the manner in which the agreement had been entered into.

7. There is no contest to the petitioner's claim that he had invoked the arbitration clause and had requested the concerned authority to appoint an arbitrator. Admittedly, the respondent had failed to respond to the said request. This Court is also unable to accept that there is any dispute as to the existence of an arbitration agreement between the parties.

8. Thus, it is clear that the concerned authority – Secretary (H&FW), Department of Health & Family Welfare, GNCT of Delhi – has failed to appoint an arbitrator.

9. In view of the above, the present petition is liable to be allowed. The learned counsel appearing for the petitioner states that in a matter concerning similar issues, Mr Narinder Paul Kaushik, former Additional District Judge, has been appointed as a Sole Arbitrator.

10. In view of the above, Mr Narinder Paul Kaushik, former ADJ is appointed as a Sole Arbitrator to adjudicate the disputes between the parties including counter claims, if any. 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.

11. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and in accordance with its Rules.

12. The parties are directed to approach the Co-ordinator, DIAC on 03.04.2018 at 11:00 AM for further proceedings.

13. It is clarified that all contentions of the parties are reserved.

14. The petition is disposed of.

VIBHU BAKHRU, J

MARCH 16, 2018

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