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

+ ARB.P. 260/2018

SATISH CHANDER MAKHIJA

..... Petitioner

Through Mr. A.K. Sharma, Adv.

versus

M/S. VASAN HEALTH CARE PVT. LTD. & ANR.

..... Respondents

Through Mr. Manoj V. George and Ms. Shilpa
M. George, Adv.

+ O.M.P.(I) 21/2017

SATISH CHANDER MAKHIJA

..... Petitioner

Through Mr. A.K. Sharma, Adv.

versus

VASAN HEALTH CARE PVT. LTD & ANR.

..... Respondents

Through Mr. Manoj V. George and Ms. Shilpa
M. George, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **14.12.2018**

1 After some arguments, learned counsel for the parties are agreed that in view of there being no dispute as to the existence of an arbitration agreement and the place at which the arbitration is to be held, which is, Chennai, the following directions can be issued both with regard to the petition filed under Section 11 and Section 9 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act'):

(i) Accordingly, HMJ K. Chandru, Former Judge, Madras High Court, Address 4-B, Ranchana, 7817, Marys Road, Arbiramapuram,

Chennai-600018, Tamil Nadu (Mobile No. 9444390962), is appointed as an Arbitrator in the matter.

(ii) Learned Arbitrator will fix, in consultation of the parties and their respective counsel, the venue of the arbitration proceedings which are to be held in Chennai.

(iii) Learned Arbitrator will be paid his fee as per the provisions of the Fourth Schedule appended to the 1996 Act.

(iv) The petition filed under Section 9 of the 1996 Act will be adjudicated upon by the learned Arbitrator by treating the same as an application under Section 17 of the very same Act.

(iv)(a) To be noted, in the Section 9 petition, this Court on 27.11.2017, had passed an order directing the respondents to furnish a bank guarantee in the sum of Rs.2,34,60,000/- as security for the rent, which, according to the petitioner, was payable by the respondents. A perusal of the order shows that this order was passed ex-parte. Since, counsel for the respondents says that given the circumstances in which the respondents are placed, they would want to seek variation/vacation of the order, liberty is granted in that behalf.

(iv)(b) Learned Arbitrator will dispose of the Section 17 application after giving due opportunity to both sides.

(v) A perusal of the order dated 20.11.2018 would show that the petitioner has obtained possession of the subject property. The respondents, on the other hand, have removed most of their equipment though the contention advanced before me is that certain fixtures and furniture are still lying at the subject property. On the

other hand, the petitioner's stand is that nothing belonging to the respondents remains on the subject property.

(v)(a) In order to get over this difficulty, Mr. Farman Ali (Cell No.9469448888) is appointed as a Local Commissioner. He will visit the subject property i.e. B-190, Derawal Nagar, Delhi-10009. The Local Commissioner will visit the subject property after giving notice to the learned counsel for the parties. The Local Commissioner will thereafter generate a report, which will be filed in this Court, with a copy to the counsel for the parties. For his effort, the Local Commissioner will be paid a fee of Rs.30,000/-.

(v)(b) The learned Arbitrator will examine the contentions of the parties with regard to the aforesaid aspect in the light of the report of the Local Commissioner.

2 Accordingly, the captioned petitions and I.A. No.14112/2018 in O.M.P.(I) 21/2017 are disposed of in the aforesaid terms.

3 *Dasti.*

RAJIV SHAKDHER, J

DECEMBER 14, 2018

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