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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 1642/2016, IA No.1844/2017 & IA No.1883/2017 (both
u/O XXXVII R-3 CPC), IA No.3640/2017 & IA No.3663/2017 (both
u/O XXXVII R-3(5) CPC) & IA No.3639/2017 & IA No.3662/2017
(both under Section 8 of the Arbitration & Conciliation Act, 1996)

MGRM MEDICARE LTD Plaintiff
Through: Mr. Rajesh Yadav & Mr. Samit
Khosla, Advs.

Versus

NARANG SURGICALS & ORS Defendants
Through: Mr. Dushyant Swaroop, Adv. for D-1
& 3.
Mr. Manish Sharma, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **30.10.2018**

1. The plaintiff has instituted this suit under Order XXXVII of the CPC for recovery of Rs.2,91,52,237/- along with interest jointly and severally from the three defendants viz. (i) Narang Surgicals, (ii) Ajay Narang, and, (iii) Dharamvir Narang, pleading that (a) the defendant no.1 Narang Surgical is the sole proprietary of defendant no.3 Dharamvir Narang who is the father of defendant no.2 Ajay Narang; (b) the three defendants are in connivance with each other and as part of the said conspiracy, the defendant no.2 Ajay Narang posing to be partner of defendant no.1 Narang Surgical signed Memorandum of Understanding (MOU) dated 27th October, 2014 with the plaintiff; (c) the plaintiff, on the basis of representations made to it, rendered financial assistance to the tune of Rs.1,95,00,000/- to the defendants to meet

the working capital requirements of the defendants; (d) the defendants handed over four cheques for a total sum of Rs.2,39,75,000/- towards refund of the said amount with an agreed interest; (e) all the said cheques were dishonoured; and, (f) the plaintiff has lodged complaints of offence committed by the defendants and in pursuance to which an FIR has been registered against the defendants. The counsel for the plaintiff states that charge sheet has also been filed.

2. Summons for appearance were issued to the defendants and upon the defendants entering appearance, summons for judgment were issued and in response where to the defendants no.1 and 3 and the defendant no.2 have filed applications for leave to defend and the defendants no.1 and 3 have also filed IA No.3639/2017 and the defendant no.2 has separately filed IA No.3662/2017, both under Section 8 of the Arbitration & Conciliation Act, 1996.

3. The counsels have first been heard on the applications under Section 8 of the Arbitration Act.

4. The counsel for the defendants no.1 and 3 draws attention to the photocopy of MOU dated 27th October, 2014 aforesaid filed by the plaintiff along with the plaint and Clause 7.1 whereof is as under:

“7.1 In case of any disputes or differences of claims arising out of this agreement shall be resolved by an Arbitration conducted in accordance with ICC Rules of Arbitration. The venue of Arbitration shall be at Delhi / Hyderabad, India.”

5. I have enquired from the counsel for the defendants no.1 and 3 as to what are the ICIC Rules of arbitration to which the clause aforesaid refers.

6. The counsel for the defendants no.1 and 3 states that he does not know but the defendants no.1 and 3 are agreeable to arbitration of a sole arbitrator as may be deemed appropriate.

7. The counsel for the defendant no.2 Ajay Narang supports the aforesaid arguments of the counsel for the defendants no.1 and 3.

8. The counsel for the plaintiff has opposed the application contending that (i) the defendant no.2 Ajay Narang, at one place in the MOU dated 27th October, 2014 described himself as partner of defendant no.1 Narang Surgical and at another place described himself as Director of defendant no.1 Narang Surgical; it has however transpired that it is the defendant no.3 Dharamvir Narang who is the sole proprietor of defendant no.1 Narang Surgical; (ii) the arbitration clause is contained in the MOU of the plaintiff with defendant no.1 but signed by the defendant no.2 Ajay Narang who is not the proprietor of defendant no.1 Narang Surgical; and, (iii) suit claim is also against non-parties to the MOU. Reliance is placed on ***Sukanya Holdings Pvt. Ltd. Vs. Vs. Jayesh H. Pandya*** (2003) 5 SCC 531.

9. Attention of the counsel for the plaintiff is drawn to the dicta of the Supreme Court in ***Ameet Lalchand Shah Vs. Rishabh Enterprises*** 2018 SCC OnLine SC 487 setting aside my judgment and the judgment of the Division Bench of this Court relying on ***Sukanya Holdings Pvt. Ltd.*** supra and holding that where averments in the plaint, of single transaction with parties as well as non-parties to agreement have been made, as have been made in the present case, the parties are to be referred to arbitration.

10. The counsel for the defendant no.1 and 3 and the counsel for the defendant no.2 on enquiry state that neither of the said defendants, in the

event of the joint and monetary claim being made by the plaintiff in arbitration against them, will take the plea of either of the said defendants being not bound by the arbitration clause aforesaid or being not subject to arbitration.

11. The aforesaid allays fear aforesaid in the mind of the plaintiff.

12. The counsel for the plaintiff has then contended that the plaintiff has instituted the suit under Order XXXVII and leave to defend filed by the defendants does not entitle the defendants to leave and the plaintiff would be entitled to a decree forthwith.

13. Section 8 is mandatory and no argument of invalidity of arbitration agreement has been urged and the contention as made cannot be a ground for not following the mandate thereof.

14. IA No.3639/2017 & IA No.3662/2017, both under Section 8 of the Arbitration & Conciliation Act are thus allowed and disposed of.

15. The suit is disposed of by referring the parties to the sole arbitration of **Mr. B.B. Chaudhary, Additional District Judge (Retd.), Mobile No. 9910384611.**

16. The counsels are agreeable to the same and state that the Arbitrator be left to fix his own fee and other terms.

17. A certificate entitling the plaintiff to refund of the court fees paid on the plaint less Rs.20,000/- be issued in favour of the plaintiff and be handed over to the counsel for the plaintiff.

Dasti.

RAJIV SAHAI ENDLAW, J.

OCTOBER 30, 2018

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