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

\+ ARB. P. 100/2019

RWL HEALTHWORLD LIMITED ..... Petitioner

Through: Ms. Manmeet Arora with Mr. Tarang Gupta and Mr. Keshav Sehgal, Advocates.

versus

FORTIS HOSPITALS LIMITED ..... Respondent

Through: Mr. Parag Tripathi, Sr. Advocate with Mr. Sanjeev Kumar, Mr. Anshul Tyagi, Mr. Abhishek Kisku, Mr. Ansul Sehgal and Mr. Laltaksh Joshi, Advocates.

\+ ARB. P. 101/2019

RWL HEALTHWORLD LIMITED ..... Petitioner

Through: Ms. Manmeet Arora with Mr. Tarang Gupta and Mr. Keshav Sehgal, Advocates.

versus

ESCORTS HEART INSTITUTE AND RESEARCH CENTRE ..... Respondent

Through: Mr. Parag Tripathi, Sr. Advocate with Mr. Sanjeev Kumar, Mr. Anshul Tyagi, Mr. Abhishek Kisku, Mr. Ansul Sehgal and Mr. Laltaksh Joshi, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 13.02.2019

1. Issue notice.

2. Mr. Sanjeev Kumar accepts notice on behalf of the respondent. Learned counsel for the respondent says that he does not wish to file a reply as the existence of the arbitration agreement is not disputed.

3. Mr. Tripathi, learned senior counsel, who appears on behalf of the respondent, on instructions, says that since the order(s) passed by SEBI (which have been filed in the other two matters which are also on my board today) disclose that Mr. Malavinder Mohan Singh and Mr. Shivinder Mohan Singh have siphoned off money, it may tantamount to fraud and, therefore, the respondent would like to move an application under Section 16 of Arbitration and Conciliation Act, 1996 (in short '1996 Act') before the learned Arbitrator on this aspect of the matter.

4. Ms. Arora, on the other hand, says that in reply to the notice invoking arbitration, the respondent had conceded that the disputes which have arisen between the parties need to be resolved via arbitration. It is, therefore, the submission of the learned counsel that the stand taken by the respondent is an afterthought.

4.1 According to Ms. Arora, since an arbitration mechanism for resolution of disputes has been agreed upon by the parties, the aforementioned submission advanced by Mr. Tripathi ought not to be countenanced by the Court.

4.2 To emphasize this point, Ms. Arora seeks to place reliance on reply dated 05.02.2019 issued by the respondent.

5. In rejoinder, Mr. Tripathi says that since the objection raised is with respect to a fraudulent activity, it impacts the jurisdiction of the Arbitral Tribunal and, therefore, the assertion made in the aforementioned reply will not efface the respondent's right to contend otherwise.

6. Since counsel for the parties have indicated that an Arbitrator can be appointed in the matter by the Court, save and except the right of the respondent to move an application under Section 16 of the 1996, the petition is disposed of with the following directions:-

(i) Hon'ble Mr. Justice Madan B. Lokur, former judge, Supreme Court of India (Cell No: 9868219007) is appointed as an Arbitrator.

(ii) The learned Arbitrator will be paid his fee in accordance with the provisions of Fourth Schedule appended to 1996 Act. Before entering upon reference, the learned Arbitrator will file a declaration as required under Section 12 and other attendant provisions of the 1996 Act.

(iii) The respondent will be at liberty to move an application under Section 16 of the 1996 Act.

(iv) The petition filed before this Court under Section 9 of 1996 Act will be placed before the learned Arbitrator who will treat the same as an application under Section 17 of 1996 Act.

5. Needless to say, the parties will be free to put forth before the learned Arbitrator their respective stands on merits of the case.

6. The parties will appear before the learned Arbitrator on 18.02.2019 at 3:00 pm. In case, the aforementioned date is not convenient to learned Arbitrator, he will fix another date which will be proximate to the date given by the Court.

7. No Costs.

RAJIV SHAKDHER, J

FEBRUARY 13, 2019
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