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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 289/2019, CAV. 899/2019 & I.As. 12488-12489/2019**
NEPHROCARE HEALTH SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr. Rakesh Kumar Khanna, Sr. Adv.
with Mr. D.N. Grover, Mr. Lakshay
Maugla, Mr. Sachin Oberoi and Mr.
Paras, Advs.

versus

NAYATI HEALTHCARE AND RESEARCH PRIVATE LIMITED

..... Respondent

Through: Mr. K.K. Khurana, Mr. Amit Kr.
Singh and Ms. Pooja Rai, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **11.09.2019**

CAV. PET. 899/2019

Learned counsel for the caveator is present. The caveat stands discharged.

I.A. 12488/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

O.M.P.(I) (COMM.) 289/2019, I.A. 12489/2019

This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 with the following prayers:

“It is therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:

- i) Allow the present petition and restrain the respondents from selling, transferring, disposing or alienating or creating any third party interest in the assets of the petitioner company as per list in Annexure P-5 of the petition.*
- ii) Further the respondents may kindly be restrained from using, operating, provide dialysis services from the assets / Dialysis Machines, RO Plant, cardiac monitors and other facilities of the petitioner which are deployed at the Project Centres of 3 hospitals viz. Nayati Mathura, Nayati Agra and VIMHANS Primamed New Delhi till the final disposal of present petition / arbitration proceedings or / and*
- iii) Direct the respondents to pay / deposit all the revenue generated from the Dialysis Machines and facilities deployed at the Project Centres of 3 hospitals viz. Nayati Mathura, Nayati Agra and VIMHANS Primamed New Delhi to the petitioner / deposit in this Hon'ble Court along with the rental / user and commercial charges of these machines amounting to Rs.5 Lacs per day till the final disposal of present petition / arbitration proceedings or / and*
- iv) Pass any other further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioners and against the respondents."*

During the course of hearing, it was suggested to the learned counsel for the parties to propose a name for appointment of Arbitrator. The learned

counsel for the parties has suggested the name of Justice Kailash Gambhir, a retired Judge of this Court to be appointed as an Arbitrator.

Noting the said submission, this Court appoints Justice Kailash Gambhir, a retired Judge of this Court, as a sole Arbitrator. The fee of the learned Arbitrator shall be regulated by the provisions of the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

Till such time the learned Arbitrator enters upon reference, the parties shall maintain *status quo* insofar as the ownership / possession with regard to the machines / equipments mentioned at page 31 of the documents. In other words, the respondent shall not create any third party rights nor part with possession of these machines / equipments. Liberty is with the parties to seek variance, modification, vacation of order by filing application u/s 17 of the Arbitration & Conciliation Act before the Arbitrator.

It is also directed that the respondent shall file on record the learned Arbitrator the details as to how many times the machines were used for the purposes of Dialysis and the revenue generated by the respondent, effective from today till the date of filing. The learned Arbitrator shall fix a date of hearing in consultation with the counsel for the parties on the following mobile numbers:

“Mr. D.N. Grover, counsel for the petitioner (Mob: 9811191401)

Mr. K.K. Khurana, counsel for the respondent (Mob: 9311308979)”

The petition and connected application are disposed of.

Copy of this order be sent to Justice Kailash Gambhir (Retd.).

Dasti.

V. KAMESWAR RAO, J

SEPTEMBER 11, 2019/aky