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

+ **ARB.P. 316/2020**

CITY X RAY AND SCAN CLINIC PVT LTD. Petitioner
Through: **Mr. Manish Malhotra, Adv.**

versus

THE MEDICAL SUPERINTENDENT GOVT.
OF NCT OF DELHI Respondent
Through: **Ms. Hetu Arora Sethi, ASC**
with **Mr. Siddharth Aggarwal, Adv.**

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

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12.10.2020

(Video-Conferencing)

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”), seeking appointment of an arbitrator.

2. *Vide* an agreement dated 11th January, 2012, the respondent contracted with the petitioner to provide diagnostic services under the Janani Shishu Suraksha Karyakaram (JSSK) to the respondent.

3. The contract contained the following arbitration clause:

“26. In the case of dispute or difference arising out of or in a way concerning the agreement shall be referred to the sole arbitration of any person nominated by the Medical Superintendent, Shri Dada Dev Matri Avum Shishu Chikitsalaya Government of NCT of Delhi. The award of the arbitrator so appointed shall be final and binding on the parties.”

4. Disputes arose between the parties, which have been set out in paras 6.6 to 6.10 of the petition, which are reproduced as under:

“6.6. THAT under the aforesaid arrangement petitioner was to raise bills for the services rendered by it to respondent on monthly basis and petitioner accordingly raised bills on monthly basis during the aforesaid period of its engagement.

6.7. THAT as per the agreed terms and, conditions (i.e term/ clause no. 17 of the aforesaid agreement), respondent, were to make payment of each monthly bill within 60 days of the submission of the respective monthly bill by petitioner / within 60 days of the receipt of the respective monthly bill from petitioner but respondent not only failed to make payment within the aforesaid period but also, by making excuses and on false pretexts, continued to induce petitioner to render services to respondent.

6.8 THAT respondent owe to petitioner, in respect of the services availed by respondent from petitioner during the period of April, 2012 to July, 2012, a sum of Rs. 15,72,765/- (Rs. Fifteen Lac Seventy Two Thousand Seven Hundred Sixty Five Only) and details thereof are depicted in the table below :-

Sr. No.	Month & Year	Bill ID	Outstanding Bill Amount for Paediatric Patients	Outstanding Bill Amount for Labour Room Patients
1.	April, 12	12-13/ April/01	Rs. 8467/-	Rs. 420306/-
2.	May, 12	12-13/ May/01	Rs. 18698/-	Rs. 397546/-
3.	June, 12	12-13/ June/01	Rs. 8409/-	Rs. 378719/-
4.	July, 12	12-13/ July/01	Rs. 23416/-	Rs. 317204/-
			Total	Rs. 15,72,765/-

Copies of above, outstanding bills are annexed as

DOCUMENT-5(COLLY).

6.9 THAT inspite of the repeated, continuous and persistent demands, including written demands of December, 2012, February, 2013, March, 2013, written demands dated 09/04/2013, 10/06/2013, 16/08/2013, 19/11/2013, 20/03/2014, 13/05/2014, 07/10/2014, emails dated 09/10/2014, 10/10/2014, 28/10/2014, 15/04/2015 and 20/04/2015, of petitioner to respondent as well as to various concerned officials of Delhi Govt. including the concerned Health ministers as well, respondent deliberately, with uncalled for, unbecoming and dishonest intentions, failed and neglected to pay the above said outstanding amount to petitioner. Copies, of some of said demand letters are attached as DOCUMENT-6(COLLY).

6.10. THAT various communications took place between the petitioner and the respondent (including concerned officials of Govt. of NCT of Delhi) on the above subject. During the course of said communications Smt. Rekha Aggarwal, Medical Superintendent of the respondent hospital vide her reply dated 12/05/2015, while admitting non-payment of above said outstanding dues of petitioner, stated that the respondent hospital can release payment of the petitioner only after the funds are released by . Copies of some of the available said communications / correspondence of the respondent including the above said reply dated 12/05/2015 are attached as DOCUMENT-7(COLLY).”

5. On 24th October, 2015, the petitioner addressed a legal notice to the respondent, setting out its claims, to which there was no response. This was followed by a second notice dated 24th September, 2019, to which the respondent responded on 28th November, 2019.

6. The petitioner replied to the said response, *vide* communication dated 10th January, 2020, also directing the respondent to appoint a sole arbitrator, in accordance with Clause 26 of the agreement dated

11th January, 2012 (*supra*).

7. This request was reiterated *vide* a subsequent notice dated 13th March, 2020.

8. The respondent, however, defaulted in appointing any arbitrator as required by Clause 26 of the agreement dated 11th January, 2012 (*supra*), though Ms. Hetu Arora Sethi, learned counsel appearing for the respondent, submits that this was owing to the restrictions consequent to the imposition of lockdown by the government in the wake of the COVID-2019 pandemic.

9. Be that as it may, the petitioner, on finding that no arbitrator was being appointed by the respondent, as required by Clause 26 of the agreement dated 11th January, 2012, filed the present petition before this Court, under Section 11(6) of the 1996 Act, praying that a sole arbitrator be appointed by this Court to adjudicate on the disputes between the parties.

10. The respondent has filed a counter-affidavit, in which it is averred that, after the filing of this petition, on 9th September, 2020, the respondent appointed one Rajeshwer K. Gupta, Advocate, as the sole arbitrator to arbitrate on the disputes between the parties.

11. In view of the judgments of the Supreme Court in *Datar Switchgear Ltd. v. TATA Finance Ltd.*¹ and *Union of India v. Bharat*

¹ (2000) 8 SCC 151

*Battery Manufacturing Co. (P) Ltd.*², it is clear that, once the petitioner approaches this Court under Section 11(6) of the 1996 Act, the right of the Respondent to appoint an arbitrator, stands extinguished.

12. I, however, queried of Mr. Manish Malhotra, learned counsel for the petitioner, as to whether he was agreeable to the appointment of Mr. Rajeshwer Gupta, Advocate as the sole arbitrator to arbitrate on the disputes between the parties.

13. Mr. Malhotra submits that, though, in principle, he has no objection to the appointment of Mr. Rajeshwer Gupta, Advocate as the sole arbitrator, it would be more appropriate, in order to assuage any misgivings regarding the impartiality of the arbitrator and, in view of the fact that he has approached this Court under Section 11(6) of the 1996 Act, the sole arbitrator be appointed by this Court.

14. Ms. Hetu Arora Sethi, learned counsel appearing for the respondent, has no objection thereto.

15. Accordingly, I appoint Mr. Pushkar Sood, Advocate (Mob No. 09810010790) as the sole arbitrator to arbitrate on the disputes between the parties.

16. Learned counsel for the parties may contact Mr. Pushkar Sood at 02:00 p.m. on 14th October, 2020, informing him of this order, so as

² (2007) 7 SCC 684

to secure his acceptance for acting as an arbitrator in this matter.

17. The modalities of arbitration would be decided by the learned sole arbitrator in consultation with the parties.

18. The learned sole arbitrator would be entitled to charge fees in accordance with the Fourth Schedule to the 1996 Act.

19. With the aforesaid observations, this petition stands disposed of.

C. HARI SHANKAR, J.

OCTOBER 12, 2020/dsn

