

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION APPLICATION NO.110 OF 2021

Siemens Healthcare Pvt. Ltd.	...Applicant
V/S	
Madras Scan Systems	...Respondent

Ms. Kunjal Patil for Applicant.
None for Respondent.

**CORAM : B. P. COLABAWALLA, J.
DATED : 14th OCTOBER, 2021.**

P.C.

The above Petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) seeking the appointment of a Sole Arbitrator to decide the disputes and differences between the Applicant and the Respondent arising out of the Service Agreement dated 24th May 2019.

2. When this matter had come up on 21st September 2021, I had directed the Applicant to serve a copy of the above Application along with a copy of the said order on the Respondent by email as well as by Registered Post Acknowledgment Due. I had therefore adjourned the matter to 12th October 2021.

3. The matter did not reach on 12th October 2021 and that is how the matter has come up before me today.

4. Today, the learned advocated appearing on behalf of the Applicant has tendered an Affidavit dated 4th October 2021 evidencing the service of the above Application on the Respondent. This Affidavit is in addition to the earlier Affidavit dated 18th August 2021. Having gone through the said two Affidavits, I am satisfied that the Respondent has been duly served and despite service, none have appeared on their behalf today.

5. The disputes and differences between the Applicant and the Respondent arise out of the Service Agreement dated 24th May 2019. The Arbitration Agreement between the parties can be found at clause 19, which reads as under:-

“19. Applicable Law and Arbitration:

19.1 This Agreement will be governed by and construed by the laws of India the Courts of Mumbai shall have exclusive jurisdiction.

19.2 In case of any dispute or claim that arises in connection with this Agreement, the Parties shall mutually agree and appoint a sole arbitrator however, if the Parties cannot mutually agree, then Siemens shall appoint a sole arbitrator. The arbitration proceedings shall be conducted as per the Arbitration and Conciliation Act, 1996 and any modifications and re-enactments thereof.

19.3 *The seat of Arbitration shall be at Mumbai. The arbitral award shall be substantiated in writing. The arbitral tribunal shall also decide on the matter of costs of the arbitration. The Parties shall bear and pay their respective cost and expenses incurred in relation to the Arbitration. The arbitration procedure shall be conducted in the English language. The Arbitral Award shall be the exclusive remedy of the Parties for all claims, counterclaims, issues or accounting presented to the Arbitrator.*

19.4 *Each Party, shall be entitled to seek necessary and appropriate interim injunctive relief, pending the outcome of the Arbitration or any other temporary measures from the Courts of competent jurisdiction at Mumbai, to enjoin the other Party from taking certain actions, which allegedly infringe the rights of the Party bringing such claim, provided that any proceedings and decisions as to the merits of the dispute are exclusively governed and resolved by Arbitration in accordance with this clause.”*

6. On perusing the Section 11 Application and the annexures thereto, I am satisfied that there exists a valid and binding Arbitration Agreement between the Applicant and the Respondent. In these circumstances, the disputes and differences between the Applicant and the Respondent need to be resolved through the process of Arbitration.

7. Considering the aforesaid, the following order is passed:-

(a) Ms. Madhavi Nalluri, an advocate of this Court, is hereby appointed as a Sole Arbitrator to decide upon the disputes

and differences between the Applicant and the Respondent arising out of and/or in connection with and/or in relation to the Service Agreement dated 24th May 2019.

- (b) A copy of this order will be communicated to the learned Sole Arbitrator by the advocates for the Applicant within a period of one week from today.
- (c) The learned Sole Arbitrator is requested to forward his Statement of Disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration Act to the advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Application and a copy of the same shall be furnished by the advocates for the Applicant to the Respondent.
- (d) The parties shall appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

- (e) Contact and communication particulars shall be provided by all sides to the learned Sole Arbitrator within a period of one week from today. This information shall include a valid and functional email address as well as mobile numbers of the respective advocates.
 - (f) All arbitral costs and fees of the Arbitrator will be borne by the parties equally, subject to the final Award that may be passed by the Tribunal. In the event, the Respondent does not appear before the Tribunal, the fees and the cost of the Arbitration shall, at the first instance, be borne by the Applicant and will be subject to any final award that may be passed by the Tribunal in that regard.
8. The above Section 11 Application is disposed of in the aforesaid terms. There shall be no order as to costs.
9. All parties to act on an authenticated copy of this order digitally signed by the Personal Assistant /Private Secretary/Associate of this Court.

(B. P. COLABAWALLA, J.)