

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

ARBITRATION APPLICATION NO.119 OF 2021

Biman Saha	...Applicant
Versus	
Salud Care (India) Pvt. Ltd. and Ors.	...Respondents

Mr. Deepak Lad a/w Ms. Punthi Shah and Mr. Chirag Bhatia,
i/b Mr. Deepak Arun Lad, for the Applicant.

Mr. Shrey Fatterpekar a/w Mr. Harsh Thadani i/b M. Mulla Associates, for
the Respondents.

CORAM : B. P. COLABAWALLA, J.

DATE : 7th DECEMBER, 2021

P.C. :-

1. The present Arbitration Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) for appointing a Sole Arbitrator to adjudicate the disputes and differences between the Applicant and the Respondents arising out of two Memorandum of Understandings (MOU) dated 22/07/2016 and 23/07/2016.

2. The learned Advocate appearing on behalf of the Applicant has fairly stated that the disputes in the present case arise only between the Applicant and Respondent Nos.1, 2 & 3. He, therefore, wishes to drop and delete Respondent No. 4 from the above Application.

3. The Arbitration Clause between the parties can be found at Clause 14 and Clause 3 of the MOUs dated 22/07/2016 and 23/07/2016 respectively and reads as follows:-

“That in the case of any dispute regarding the terms of the MOU or its interpretation, the matter shall be referred to an Arbitrator acceptable to both the parties. Under this MOU, the Party of the First Part and the Party of the Second Part accept Mr. Paresh J Sampat as its arbitrator and the decision given by the Arbitrator shall be final and binding on both the parties.”

4. The learned counsel appearing on behalf of the Respondents opposed the Section 11 application inter alia on the ground was that there was no valid arbitration agreement between the Applicant and the Respondents because the MOU dated 22nd July 2016 has been executed without any authority and does not bind Respondent No. 1 and Respondent No. 2 is ex-facie not a signatory to either MOU relied upon by the Applicant. Assuming for a moment that Respondent No. 1 is bound by the arbitration agreement, Respondent No. 2 is not a group company or associated with Respondent No. 1 in a manner to bind it to the arbitration agreement. That being the case, the Arbitration Application ought to be dismissed. However, despite these objections, the learned counsel appearing on behalf of the Respondents fairly stated that if these objections are left open to be taken before the Arbitral Tribunal, then the Respondents have no

objection to the constitution of the Arbitral Tribunal.

5. Accordingly, both parties have also agreed that Mr. Rahul Sarda an advocate of this Court, be appointed as the Sole Arbitrator to adjudicate the disputes and differences between parties arising out of the MOU dated 22/07/2016 and the MOU dated 23/07/2016. Considering the aforesaid stand of the parties, the following order is passed:-

- (a) By consent, Mr. Rahul Sarda an advocate of this Court, is hereby appointed to act 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 MOUs dated 22/07/2016 and 23/07/2016.
- (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 advocates for the Respondents.
- (d) The parties shall appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions in 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 both 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) The Respondent is at liberty to raise all questions of jurisdiction within the meaning of Section 16 of the Arbitration Act. All contentions in that regard are expressly kept open for both sides.
- (g) The parties agree that all arbitral costs and the fees of the Arbitrator will be borne by the two sides equally and will be subject to the final Award that may be passed by the Tribunal.
- (h) The parties immediately consent to a further extension of six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (i) The parties have agreed that the venue and seat of the arbitration will be in Mumbai.
- (j) The Arbitration Application is accordingly disposed of. However, there shall be no order as to costs.

6. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[B. P. COLABAWALLA, J.]