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

+ **ARB.P. 916/2021**

GENESTORE INDIA PVT LTD & ANR. Petitioners

Through: **Mr. Aman Nandrajog & Ms.
Shreya Nair, Advs.**

versus

SPICE HEALTHCARE PVT LTD & ORS. Respondents

Through: **Mr. Ritin Rai, Senior Advocate
along with Mr. Sidhartha Barua,
Mr. Praful Jindal, Ms. Ritika
Sinha and Mr. Daanish Abbasi,
Advocates**

+ **O.M.P.(I) (COMM.) 318/2021**

GENESTORE INDIA PVT LTD & ANR. Petitioners

Through: **Mr. Aman Nandrajog & Ms.
Shreya Nair, Advs.**

versus

SPICE HEALTHCARE PVT LTD & ORS. Respondents

Through: **Mr. Ritin Rai, Senior Advocate
along with Mr. Sidhartha Barua,
Mr. Praful Jindal, Ms. Ritika
Sinha and Mr. Daanish Abbasi,
Advocates
Mr. Gaurav Duggal, Adv. for
Iyogi Technical Services Pvt.
Ltd.**

+ **ARB.P. 942/2021 & I.A. 12549/2021**

SPICE HEALTHCARE PVT LTD Petitioner

Through: **Mr. Ritin Rai, Senior Advocate
along with Mr. Sidhartha Barua,
Mr. Praful Jindal, Ms. Ritika**

Sinha and Mr. Daanish Abbasi,
Advocates

versus

GENESTORE INDIA PVT LTD & ANR. Respondents
Through: Mr. Aman Nandrajog & Ms.
Shreya Nair, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

O R D E R (ORAL)

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27.09.2021

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1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, ("the 1996 Act" in short), for reference of the dispute between the parties to arbitration.
2. Mr. Ritin Rai, learned Senior Counsel for the respondent, points out, at the outset, that Respondent Nos. 2 and 3, who are Directors of Respondent No. 1, are not parties in their individual capacity to the arbitration agreement, and cannot, therefore, be made parties in the present petition either.
3. Mr. Nandrajog, learned Counsel for the petitioner, agrees to delete Respondent Nos. 2 and 3.
4. Accordingly, Respondent Nos. 2 and 3 shall stand deleted from the array of parties.

5. The dispute between the parties arises in the context of three agreements, which were executed between Petitioner No. 1 and Respondent No. 1, a Strategic Partnership Agreement dated 29th October, 2020, a Termination, Supply and Services Agreement dated 13th January, 2021 and an Asset Transfer Agreement dated 13th January, 2021, though Mr. Nandrajog, submits that the arbitration clause which is invoked in the present case is in the Termination, Supplies and Services Agreement dated 13th January, 2021.

6. As learned Counsel are, *ad idem*, agreeable to the disputes being referred to arbitration, it is not necessary to burden this order with a detailed recital of the specifics of the dispute. Suffice it to state that, *vide* the Termination Agreement dated 13th January, 2021, the Strategic Partnership Agreement dated 29th October, 2020, was terminated and, thereafter, Petitioner No. 1 demanded, from the respondents, an amount of ₹ 13,80,00,000/-. The surviving demand, as on date, is, according to Mr Nandrajog, in the region of ₹ 7 crores. The grievance of the petitioner against the respondents appears to be that Respondent No. 1 defaulted in making payments in terms of Clause 2.2 of the termination agreement, and that certain post-dated cheques furnished by Respondent No. 1 were dishonoured at the instance of Respondent No. 1.

7. Needless to say, the respondents dispute these allegations.

8. In any event, the facts, as stated in the petition, do make out a

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case for referring the dispute for arbitration.

9. As such, this Court appoints Hon'ble Ms. Justice Indermeet Kaur Kochhar (retired) (Cell: 9910384614) as the arbitrator to arbitrate on the disputes between the parties. The arbitrator would be entitled to fees in accordance with the Fourth Schedule to the 1996 Act, or as otherwise fixed by her in consultation with the parties.

10. The learned Arbitrator is requested to file her disclosure under Section 12(2) of the 1996 Act, within a week of entering on reference.

11. Needless to say, this Court does not express, one way or the other, any opinion on the disputes between the parties or on any other aspects including maintainability and limitation. All issues including the arbitrability of the dispute and all defences available to both parties shall remain open for being urged before the learned Arbitrator.

12. With the aforesaid directions, this petition stands disposed of.

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13. This is a petition under Section 9 of the 1996 Act, for seeking pre-arbitral *ad interim* reliefs.

14. Learned Counsel for the parties, are agreed that, as an arbitrator had been appointed, today to arbitrate on the disputes between the

parties, the present petition may be referred to the learned arbitrator for adjudication, treating it as an application under Section 17 of the 1996 Act.

15. Accordingly, this petition stands disposed of, by referring it to Hon'ble Ms Justice Indermeet Kaur Kochhar (retired), who has been appointed as an arbitrator *vide* order passed today in ARB P 916/2021, for being decided as an application under Section 17 of the 1996 Act.

16. For the said purpose, the Registry shall return the petition to the petitioner so that it could be presented before the learned Arbitrator, without the petitioner having to re-file the petition.

17. The learned Arbitrator is requested to decide the application as expeditiously as possible.

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

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19. This is a petition under Section 11(6) of the 1996 Act, for appointment of an arbitrator to arbitrate on the disputes between the parties. The petitioner, in this petition, is the respondent in ARB P 916/2021. The disputes to which this petition alludes also relates to the three agreements, to which reference has already been made in my order passed today in ARB P 916/2021, though the arbitration clause invoked by the petitioner in this case is under the Asset Transfer Agreement

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dated 13th January, 2021.

20. Learned Counsel for the parties are agreed that the disputes in this petition could also be referred for adjudication to the learned arbitrator, who has been appointed to adjudicate on the dispute forming subject matter of ARB P 916/2021 and OMP (I) (COMM) 318/2021.

21. As such, this petition is disposed of by appointing Hon'ble Ms Justice Indermeet Kaur Kochhar (retired) as the arbitrator to arbitrate on the disputes forming subject matter of the present proceedings. The learned Arbitrator would be entitled to a separate set of fees in these proceedings, as per the Fourth Schedule to the 1996 Act, or as otherwise fixed by her in consultation with the parties.

22. This petition also stands disposed of in the aforesaid terms. All applications in these petitions stand disposed of.

C.HARI SHANKAR, J

SEPTEMBER 27, 2021

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