

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMM. ARBITRATION APPLICATION NO.182 OF 2021

Siemens Healthcare Pvt.Ltd. ..Applicant

Vs.

Bharat Scans Pvt.Ltd. ..Respondent

Mr.Prashant Dingrani, for the Applicant.

Mr.Ashish P. Pawar, for the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 6 JUNE 2022.

P.C.:

1. Heard learned Counsel for the applicant and learned Counsel for the respondent.
2. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "**the Act**") whereby the applicant seeks appointment of an arbitral tribunal for adjudication of the disputes and differences which have arisen between the parties under the Service Agreement dated 9 February 2017. Under the said agreement, the applicant was to service the equipments of the respondent for a period of three years beginning from 1 January 2017 to 31 December 2019. The terms and conditions of the payment were also agreed at page 2 of the agreement in question. The case of the applicant is that as per the terms and conditions of the agreement, the applicant has provided the

services, certain payments were made by the respondent, however, in respect of post dated cheques which were issued, the details of which are set out in the memo of petition, the cheques were dishonoured. The applicant contends that despite services being rendered, no payments were forthcoming from the respondent. An amount of Rs.17,71,942.16/- as detailed in the invocation notice dated 19 February 2021 is due and payable by the respondent to the applicant. The applicant has contended that despite invocation letter dated 19 February 2021, the respondent having not agreed to refer the disputes to arbitration, the present application was filed.

3. The respondent is represented by learned Counsel Mr.Ashish Pawar. He submits that despite repeated requests as made to his clients, he has not received any instructions from the respondent. No reply affidavit has been placed on record.

4. In these circumstances, the averments as made in the application would be required to be taken as uncontroverted. A perusal of the service agreement clearly indicates that there is an arbitration agreement between the parties as contained in Clause No.19. The parties have also agreed that the seat of the arbitration shall be at Mumbai. This Court thus has jurisdiction to entertain this application. There is also a lawful invocation of the arbitration agreement, and as there was no response to it from the respondent in agreeing to appoint

an arbitrator.

5. In my opinion, in these circumstances, the applicant has made out a case for this Court to exercise jurisdiction under Section 11 of the Act. The application is accordingly required to be granted. Hence, the following order:-

ORDER

(i) Mr.Ravi Gadagkar, Advocate of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Service Agreement dated 9 February 2017;

(ii) The learned sole prospective arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(iv) All contentions of the parties on merits of the matter are expressly kept open;

(v) The application is disposed of in the above terms. No costs.

(vi) Office to forward a copy of this order to the learned Arbitrator on the following address:

Mr.Ravi Gadagkar, Advocate
305, 3rd Floor, Vardhaman Chambers,
Cawasji Patel Street, Fort,
Mumbai-400001.
Mobile: 9869275652
Email: ravigadagkar@yahoo.in

[G.S. KULKARNI, J.]