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

COMMERCIAL ARBITRATION PETITION NO. 82 OF 2022

Dharmchand J. Surana

..Petitioner

Vs.

M/s. Draeger India Pvt. Ltd. (formerly
known as Draeger Medical India Pvt. Ltd.)

..Respondent

AND

COMMERCIAL ARBITRATION PETITION (L.) NO. 19849 OF 2022

Mahatma Phule Charitable Trust & Anr.

..Petitioners

Vs.

M/s. Draeger India Pvt. Ltd. (formerly
known as Draeger Medical India Pvt. Ltd.)

..Respondent

Mr. Mayur Khandeparkar with Mr. Vikramjeet Garewal, Mr. Umesh
Jawari i/b. S. Ashwini Kumar Co. LLP for Petitioner.

Mr. Manoj Khatri with Mr. Arnab Ghosh the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : JUNE 27, 2022.

P.C.:

1. These are two petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") whereby the petitioners have prayed for interim measures pending the arbitral proceedings. The disputes between the parties have arisen under a contract for maintenance of the hospital equipments which are manufactured by the respondent, the details of which are set out in the schedule to the agreement which is an Annual Maintenance Contract (AMC) of the said Machines.

2. On 17 June, 2022, Commercial Arbitration Petition No.82 of 2022

was extensively heard, when the following order was passed:-

“1. Leave to amend to implead the trust as a co-petitioner. Let the amendment be carried out during the course of the day.

2. I have heard learned counsel for the parties for some time on this proceeding.

3. Dispute between the parties concerns a contract in regard to technical maintenance services of the medical equipments which are manufactured by the respondent, as also under the agreement in question, maintenance/service is being provided by the respondent. The contention of the petitioner is that the respondent has stopped servicing the equipments which are critical equipments for the working of the Operation Theatres, in the hospital being managed by the Trust.

4. Considering the rival contentions in my considered opinion this is a matter which eminently needs to be settled by the parties. Mr. Ghosh, learned counsel for the respondent has also been fair in his approach to state that an attempt can be made in this regard. He makes a statement that the suit which has been filed by the respondents for recovery of certain amounts, can also be settled which would possibly bring to an end all the disputes between the parties. Mr. Ghosh has an alternative contention. His submission is that if the disputes cannot be resolved, the parties can be referred to arbitration. In my opinion, the parties are free to take a well considered decision so that an endeavour can be made to put an end to the disputes. The proceeding are accordingly required to be adjourned to enable them to do so.

5. The immediate concern of the petitioner is in regard to the maintenance of the medical equipments which are subject matter of the service contract. In my opinion, service to the equipments ought not to be stopped by the respondent and relate the issue in that regard to the other dispute which is subject matter of the pending suit. The monetary dispute is independent of the service contract. It is thus appropriate that the respondent in the meantime considers servicing the equipments. Needless to observe that this would be subject to the petitioner paying in advance the maintenance amount which is agreed between the parties, which learned counsel for the petitioner states that the petitioner is agreeable to immediately pay. If that be so, in my opinion, the respondent needs to rise to the occasion and service the equipments which are needed for the day to day running of the hospital.

6. All this is without prejudice to the rights and contentions of the parties.

7. As fairly stated, the parties in the meantime would work out an amicable resolution of the disputes as noted above.

8. Stand over to **20 June, 2022 (H.O.B.).**”

3. Thereafter on 20 June, 2022 the Court after hearing the parties, passed the following order and accordingly recorded a statement as made on behalf of the petitioner that the petitioner would make payment of the amounts to be paid under the service contract in regard to the equipments in question:-

“1. Learned counsel for the respondent states that latest by tomorrow the amounts which are required to be paid under the service contract, would be informed to the petitioner. Mr. Khandeparkar, learned counsel for the petitioner on instructions has made a statement that the petitioner in that event would immediately make payment after the amounts as would be informed by the respondent. Needless to observe that the moment the payment is received, the respondent shall service the equipments of the petitioner.

2. In the meantime, settlement talks be progressed as fairly stated on behalf of the parties.

3. Accordingly, stand over to **27 June, 2022.**”

4. It is not in dispute that the petitioner has made such payments to the respondent and now the contract is to be renewed under the maintenance contract from 20 June, 2022. There was some dispute in regard to the fact as to whether a fresh renewal contract is required to be executed between the parties. However, such dispute now stands resolved as Mr. Khandeparkar, learned counsel for the petitioner makes a

statement that his clients are agreeable to enter into a fresh contract for a period of one year, however, on the same terms and conditions however with 10% increase in value on the earlier contract, which has come to an end on 19 June, 2022. Mr. Khandeparkar has also stated not only the higher contract price which includes additional 10% has been paid, but also an extra amount has been paid, as demanded by the respondent.

5. In this view of the matter, learned counsel for the parties, on instructions, state that the disputes between the parties on the annual maintenance contract of the medical equipments in question stands settled as also there would be no requirement of the parties to refer to arbitration.

6. During the pendency of the first petition (Commercial Arbitration Petition No.82 of 2022), another petition being Commercial Arbitration Petition (L.) No.19849 of 2022 came to be filed under Section 9 of the Act praying for interim measures pending the arbitral proceedings. However, in view of the stand taken by the parties and as noted above, it is agreed between the parties that this petition also needs to be disposed of. Both the petitions are accordingly disposed of by the following order:-

ORDER

(i) The petitioners have agreed to enter into a fresh Agreement for

Annual Maintenance for a period of one year which begins from 20 June, 2022 on the same terms and conditions as contained in the earlier contract dated 13 August, 2020, however agreeing to enhanced yearly increment of 10% over and above the contract price as agreed under the contract dated 13 August, 2020 for the immediate period of 12 months and such 10% enhancement for the further years as per condition no. 2 of the contract dated 13 August, 2020.

(iii) The parties agree that there is no dispute between the parties for the maintenance services of the medical equipments in question during the period June 2021 to June 2022.

(iv) The parties also agree that Commercial Suit No.100 of 2021 as pending in the Court shall be referred for arbitration and an application to that effect would be made before the Suit Court.

(v) In view of the above consensus, nothing would survive in the petitions and they are accordingly disposed of in view of the consequential position taken by the parties. No costs.

[G.S. KULKARNI, J.]