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

% *Date of Decision: 07th July, 2023*

+ O.M.P.(I) (COMM.) 150/2023

NAYATI HEALTHCARE AND RESEARCH NCR PRIVATE LIMITED

..... Petitioner

Through: Mr. Parag Tripathi and Mr. Dayan Krishnan, Senior Advocates with Mr. Rajat Joneja, Mr. Anmol Kumar, Mr. Vineet Malhotra and Ms. Mishika Bajpai, Advocates.

versus

VIDYA SAGAR KAUSHALYA DEVI MEMORIAL HEALTH CENTRE

..... Respondent

Through: Mr. Akshay Makhija, Senior Advocate with Mr. Adarsh Chamoli and Ms. Shweta Kumar, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act') seeking the following reliefs:

"a. Pass an interim order staying the effect of the Termination Letter dated 11.05.2023 until such time the disputes arising out of the Agreements are finally adjudicated by the Arbitral Tribunal to be constituted;

b. Pass an interim order restraining the Respondent, their employees, officers and agents from interfering in any manner with the Petitioner's performance of its services in terms of the AMC and of the Petitioner's possession of the Land;

c. Pass an interim order restraining the Respondent, their employees, officers and agents from alienating or creating any third-party rights on the Land situated at Institutional Area, Nehru Nagar,



Lajpat Nagar, Delhi- 110024 until such time the disputes arising out of the AMC are finally adjudicated by the Arbitral Tribunal so constituted;

d. Pass an interim order directing the Respondent to forthwith withdraw its bouncers/goons posted at the Land and permit the Petitioner to perform its services as provided under the Agreements;

e. Pass ad-interim ex parte order in terms of prayer clause (a), (b), (c) and (d) above;

f. Award costs of the instant Petition in favour of the Petitioner;

g. Pass any other order(s), direction(s) or relief(s) in favour of the Petitioner and against the Respondent as may be deemed fit and proper by this Hon'ble Court in the facts and circumstances of the present case and in the interest of justice."

2. Disputes between the parties have arisen with respect to various Agreements entered into and executed between them for provision of healthcare services in the premises of the Respondent including managing centres for diagnostics, nuclear medicine, pathology, radiology, etc. Triggered by the termination notice, the present petition was filed seeking interim protection till the disputes are decided by the Arbitral Tribunal envisaged under the Dispute Resolution Mechanism incorporated as a part of the Agreements, whereby any claims, disputes, questions or controversies involving the parties and arising out of or in connection with the Agreements or execution, interpretation, validity, performance, breach or termination thereof are to be referred for arbitration as per the 1996 Act.

3. On 15.05.2023, this Court had directed that till the next date of hearing, the termination notice dated 11.05.2023 be kept in abeyance. This order granting interim relief to the Petitioner was assailed by the Respondent before the Division Bench in FAO(OS)(COMM) 111/2023. The Division Bench passed the following order on 29.05.2023:-



“CAV 272/2023

As learned counsel appears for the caveator / respondent, caveat stands discharged.

CM APPL. 27395/2023

Exemption allowed subject to all just exceptions. Application stands disposed of.

CM APPL. 27397/2023

This is an application filed by the applicant / appellant seeking permission to file lengthy list of dates.

For the reasons stated in the application, same is allowed. Lengthy list of dates are taken on record.

Application stands disposed of.

FAO(OS) (COMM) 111/2023 & CM APPL. No. 27394/2023

1. *The challenge in this appeal is to an order dated May 15, 2023 in OMP (I) (COMM) 150/2023 passed by the learned Single Judge, whereby the learned Single Judge while considering the petition filed by the respondent under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act of 1996', for short) has directed, the letter dated May 11, 2023, (which is a letter of termination of the agreement by the appellant) shall be kept in abeyance.*

2. *We find that next date of hearing before the learned Single Judge is July 31, 2023.*

3. *Mr. Sandeep Sethi, learned, Sr. Counsel appearing for the appellant would submit that the ground on which the learned Single Judge has stayed the; / termination order is clearly unsustainable and the effect thereof is that the appellant is required to continue the agreement with the respondent. He also submits when the contract is terminable and the appellant having terminated the agreement, the remedy for the respondent is to seek damages.*

4. *On the other hand, Mr. Parag Tripathi, learned Sr. Counsel appearing for the respondent would contest the submissions made by Mr. Sethi by stating that the learned Single Judge has heard the counsel for the parties at length and by noting in paragraph 10 of the impugned order that the letter of termination is not in terms of Clause 38 of the Agreement dated April 11, 2015, has by holding that only parties to the agreement may terminate the same, has passed the impugned order. In any case, he submits, that it is the case of the respondent herein that the appellant was required to give a notice to cure the defects before effecting the termination.*

5. *We say nothing on the submissions made by Mr. Sethi and Mr. Tripathi. Since the matter is pending consideration before the learned Single Judge and the counsel for the parties agree that the*



date of hearing be advanced, so that the petition can be heard, we deem it appropriate to list the matter before the learned Single Judge on June 1, 2023 by granting one day's time to the appellant herein to file reply to the petition under Section 9 of the Act of 1996 and also time of one day thereafter to the respondent to file rejoinder to the same.

6. *Appeal stands disposed of.*

CM APPL. 27396/2023

Dismissed as infructuous."

4. When the petition was taken up for hearing, the Court was apprised that pursuant to the invocation of the Arbitration Agreement by the Petitioner, parties have agreed to the appointment of Mr. Justice Badar Durrez Ahmed (Retd.), Former Chief Justice of Jammu and Kashmir High Court as a Sole Arbitrator to adjudicate the disputes between the parties. Once the Arbitral Tribunal has been constituted and this Court is yet to begin hearing the petition on merits, it is appropriate that the issue of interim relief is decided by the Arbitral Tribunal by treating this petition as an application under Section 17 of the 1996 Act. This Court sees no impediment in this course of action since it is not the case of either party that the remedy under Section 17 of the 1996 Act is inefficacious. Accordingly, the petition is disposed of with liberty to the parties to approach the learned Arbitrator to fix a date for hearing on the interim relief.

5. Mr. Sandeep Sethi, learned Senior Counsel for the Respondent has expressed an urgency in the matter since an interim order is operating against the Respondent, whereby the Court has directed the Respondent to keep the termination letter in abeyance. This Court entirely agrees with the Respondent that the matter with respect to interim relief needs an expeditious hearing and this urgency is also



recognised by the Division Bench, which is clearly reflected from the order passed on 29.05.2023.

6. In this view of the matter and to expedite the hearing before the learned Arbitrator, Registry is directed to forward this petition along with the entire record to the office of the learned Arbitrator, within a week from today. Looking at the urgency in the matter, it is requested that the learned Arbitrator will make every endeavour to decide the application under Section 17 of the 1996 Act as expeditiously as possible, after entering upon reference. Needless to state that it is open to the learned Arbitrator to continue or vacate or vary or modify the interim order granted by this Court on 15.05.2023, as deemed appropriate and proper in law and having regard to the facts and circumstances of the case. It is clarified that all rights and contentions of the parties are being kept open and this Court has not expressed any opinion on the merits of the case.

7. Interim order dated 15.05.2023 shall continue till the decision is taken by the learned Arbitrator.

8. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

JULY 07, 2023

ck/kks