

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP-COM/729/2024
SUN HOSPITAL PRIVATE LIMITED
VS
M/S SIEMENS HEALTHCARE PRIVATE LIMITED

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
Date : 21st August, 2024

Appearance:
Mr. K.R. Thaker, Adv.
Mr. Ramendu Agarwal, Adv.
Ms. Rishika Goyal, Adv.
. . .for the petitioner.

Mr. Probal Mukherjee, Sr. Adv.
Ms. Madhushri Dutta, Adv.
. . .for the respondent.

The Court : Learned counsel for the petitioner contends that in view of the respondent having stopped servicing the sensitive medical equipment of the petitioner in view of the dispute involved, the petitioner is suffering tremendously. As such, it is sought to be contended that an exception as carved out in the second limb of Sub-section(3) of Section 9 of the Arbitration & Conciliation Act, 1996 has been made out.

Learned senior counsel appearing for the respondent opposes such prayer and submits that in view of the previous rejection of the petitioner's application for recall of a still earlier order appointing an Arbitrator under Section 11 of the 1996 Act and since the learned Arbitrator has already held several sittings, an application under Section 17 of the 1996 Act would be the appropriate remedy available to the petitioner. As such, the present application is not maintainable.

Even without going into the merits of the respective contentions of the parties on the interim measure sought, it is evident that the matter was referred to arbitration by appointment of an Arbitrator under Section 11 of the 1996 Act as long back as on January 17, 2024. The learned Arbitrator has already commenced the arbitral proceeding which has also proceeded with the reference up to an extent.

As such, I do not find any plausible cause made out by the petitioner to hold that any exceptional circumstance as contemplated in Sub-section(3) of Section 9 has been made out.

Since the petitioner may very well approach the learned Arbitrator with an application under Section 17 of the 1996 Act on the self-same prayers as made herein, AP-COM/729/2024 is dismissed as not maintainable, however, with liberty to the petitioner to approach the learned Arbitrator on the self-same cause of action and reliefs under Section 17 of the 1996 Act.

It is reiterated that the merits of the contentions of the parties have not been gone into and it will be entirely open to the learned Arbitrator to decide all issues involved independently, without being influenced in any manner by any of the observations made above.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)