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Arb.O.P(Com.Div.) No.47 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.47 of 2024

CIPACA Healthcare Services Private Limited,
Represented by its Managing Director
Raja Amarnath,
D.No.2/2102/A, Madhakoil Street,
Mugaliyakkam-Manapakkam Road,
Mugaliyakkam, Chennai – 600 125.

... Petitioner

Vs.

Dr.Ajay Kumar Chaudry

... Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to constitute an Arbitral Tribunal to decide the dispute between the parties in accordance with Clause 9 of the Agreement to provide Comprehensive Medical Services dated 23.05.2022, Clause 5 of the Deed of Indemnity dated 23.05.2022 and Clause 4 of the Agreement for Business Development and Referrals dated 23.05.2022.

For Petitioner : Ms.M.Meenatchi

For Respondent : No appearance

ORDER



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The petitioner has filed this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, to constitute an Arbitral Tribunal to decide the dispute between the parties in accordance with Clause 9 of the Agreement to provide Comprehensive Medical Services dated 23.05.2022, Clause 5 of the Deed of Indemnity dated 23.05.2022 and Clause 4 of the Agreement for Business Development and Referrals dated 23.05.2022.

2. Notice on the respondent has been served and the name of the counsels is also printed in the Cause List. However, the vakalat which was filed has been returned for defect. It has not been represented perhaps, on account of the same, there is also no representation on behalf of the respondent though the name of the counsel for the respondent is printed in the Cause List.

3. Be that as it may, the dispute between the petitioner and the respondent is arbitrable in terms of Clause 9 of the Comprehensive Medical Services Agreement dated 23.05.2022. It reads as under:-

“9. Arbitration:

This Agreement, and all disputes or claims arising out



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of or in connection with it or its subject matter of formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the laws of the India and any dispute will be settled only within Chennai Jurisdiction.

Any dispute or difference arising out of this Agreement shall be finally settled by arbitration. The provisions of the Indian Arbitration Act, 1940 shall apply in such proceedings.

Such dispute or difference shall be referred to the award of two Arbitrators, one Arbitrator to be nominated by FIRST PARTY and the other to be nominated by the SECOND PARTY or in case of the said Arbitrators not agreeing, then to the award of an Umpire to be appointed by the Arbitrators in writing before proceeding with the reference, and in case the Arbitrators cannot agree to the Umpire, he may be nominated by the Arbitration Council of India. The award of the Arbitrators, and in the event of them not agreeing, or the Umpire appointed by them, the Arbitration Council of India shall be final and binding on the parties.

The Arbitrator's decision shall be final and binding on both the parties. The resulting award shall be in lieu of any other remedy.”

4. The petitioner has also invoked arbitration clause by issuing Section 21 Statutory Legal Notice on 07.12.2023, which has been delivered on the respondent on 13.12.2023. However, the respondent has failed to respond to the same.

5. In the said notice, the petitioner has nominated Mr.P.Anbarasan, Advocate from this Court as the Nominee Arbitrator as per the aforesaid clause.



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6. In this proceeding, after the notice was served on the respondent and the respondent was represented by a counsel who undertook to file vakalat, there is no representation on behalf of the respondent today also and no counter affidavit has been filed so far.

7. Under these circumstances, it has to be construed that the respondent has forfeited the rights to participate in the process of constitution of an Arbitral Tribunal.

8. According to the petitioner, the amounts due from the respondent is about Rs.1,62,18,000/-.

9. Considering the above, Court is inclined to confirm the nomination of Mr.P.Anbarasan, Advocate as the Nominee Arbitrator on behalf of the petitioner.

10. Since the respondent has failed to nominate its Nominee Arbitrator, Court is inclined to appoint M/s.Sudharshana Sunder, Advocate, having Office at No.31, New Additional Law Chambers, High Court



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Buildings, Chennai – 600 104, Mobile No.94442 32590, from this Court as the Nominee Arbitrator on behalf of the respondent.

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11. The respective Arbitrators shall nominate/appoint a Presiding Arbitrator and constitute an Arbitral Tribunal to enter upon reference to adjudicate/resolve the *inter se* dispute between the parties strictly in accordance with the terms of the Comprehensive Medical Services Agreement dated 23.05.2022.

12. It is expected that the Arbitral Tribunal will be constituted within a period of thirty days from the date of receipt of a copy of this order. The Arbitral Tribunal shall, after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order touching on limitation.



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13. The Arbitral Tribunal shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitral Tribunal and later recover the same from the respondent.

14. Since this Court has appointed the Arbitral Tribunal, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the Arbitral Tribunal.

15. All the issues relating to merits including limitation shall be decided by the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, 1996.

16. This Original Petitions stand allowed, leaving the parties to bear their own costs.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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